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AMERICAN STATE TRIALS

A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to 1920.

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.
EDITOR

VOLUME XV

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TO
FREDERICK WILLIAM LEHMANN, LL.D.

Of St. Louis, Missouri

EMINENT JURIST, PATRON OF ART AND LETTERS
AND DEVOTED CITIZEN

This volume is respectfully dedicated

FOREWORD

The cases in this volume were edited by Judge Lawson, who died Oct. 28, 1921.

For more than twenty years he had been collecting the material for American State Trials, the compilation of which he looked upon as his crowning life work. He felt that the great trials in our State and Federal courts should be recorded in permanent form, as they are a part, and an important part, of American History. It was a great task and a real service to posterity.

John Davison Lawson was a prolific writer. His reputation as an author of legal works is secure for all time. He held many distinguished positions. He had been Dean of the Law Department of the University of Missouri, Editor of American Law Review, Associate Editor of the Journal of Criminal Law and Criminology, and he was Special Commissioner from the American Institute of Criminal Law and Criminology to investigate the administration of criminal law in Great Britain and France. His legal works embrace, "LEADING CASES SIMPLIFIED," "EXPERT AND OPINION EVIDENCE," "PRESUMPTIVE EVIDENCE," "DEFENCES TO CRIME," "RIGHTS AND REMEDIES," "THE AMERICAN LAW OF CONTRACTS," "THE LAW OF BAILMENTS," etc., etc.

His greatest one-volume work is "THE AMERICAN LAW OF CONTRACTS," now in its third edition. In this work, the principles of the law are so clearly stated

and so forcefully illustrated that it has come to be regarded as a classic on the subject.

John D. Lawson was, in the best sense of the word, a lawyer. He was a foremost advocate of reform of our Judicial System, and of brushing aside the technicalities and obsolete forms which hamper our courts in the administration of justice.

The writer of the preface to this volume enjoyed an acquaintance with Judge Lawson for more than forty years. The relations as between author and publisher were cemented by a friendship which grew with the years.

His death was a great loss to the profession which he adorned.

PREFACE TO VOLUME FIFTEEN.

This volume is composed of California cases entirely. A local historian¹ has pointed out that "the Pacific Coast has been the nursery of surprises in every department of life. Passing by the period of the pioneers in 1849, the gold miners of the early years, the Vigilance Committees and the gradual development of a modern civilization, there followed the period where millionaires were first counted in large numbers, where vast wealth flowed into the hands of a *neuveau riche*, and where great engineering work brought through a transcontinental railroad, the East to the West, and laid the foundations for other and even greater fortunes."

In the early 50's this state was the mecca of wealth seekers. Attracted by the reports from the gold fields and of fortunes suddenly acquired, people from every part of the country poured into the "Golden State." With the good came the bad, adventurers and adventuresses, gamblers and criminals flocked into San Francisco and the latter to such an extent that the orderly processes of the law became inadequate to maintain order or rid the city of thieves, thugs, ballot-box stuffers and corrupt politicians.

Conditions became so intolerable that the people arose and organized the Vigilance Committee of 1851 (p. 1) to run the criminals out of the state. The committee of 1856 (p. 55) was organized to correct the abuses of corrupt politicians. Both were successful

¹Life of David S. Terry, A. E. Wagstaff, 1892.

because the good people were behind them, and law and order was restored. Whatever may be said of the legality of these self-constituted committees, it is apparent that they worked out a great reform and exercised authority with moderation, and even with mercy.

The conditions in San Francisco in 1851 were not altogether unlike those existing in many of our cities at the present time, where gunmen and gangsters openly defy the law, kill and rob in broad daylight and terrorize law-abiding citizens. The police seem utterly unable to cope with the situation. They fail in most cases to even make arrests, and in the few cases where arrests are made, the criminals escape punishment either through political influence, or because the courts are hampered by our decayed and worn-out system of criminal procedure and our farcical jury system. If the constituted authorities are unable to find the means of ridding the communities of gangsters, thieves and murderers, is it not likely that some day the people may rise in their might, and may we not again see Vigilance Committees organized that will perform as heroic service as those in San Francisco in 1851 and 1856?

The trial of *Charles Cora* (p. 16) was apparently a miscarriage of justice through bribery of some of the jurors and perjured testimony of witnesses for the defense.

The case shows that seventy years ago money was as powerful in the defense of criminals as now, and it is a dangerous sign in our form of government when it can be said that a rich man need not fear the law.

The speech to the jury by Edward D. Baker, called the Orator of the Pacific (p. 35), was a splendid effort, worthy of a better cause.

The second Vigilance Committee was organized to

purge the city of its corrupt politicians. The proceedings of this remarkable tribunal (p. 55) are an important part of the early history of San Francisco.

After the Vigilance Committee of 1851 had accomplished its purpose of bringing notorious criminals to justice and running the undesirables out of the state, the people resumed attention to their affairs and business, apparently overlooking and neglecting their civic duties. Gradually the city filled up with corrupt politicians from eastern cities, familiar with every crooked device in fixing elections. Through ballot stuffing and intimidation at the polls, they obtained control of all elective offices, which were filled by unscrupulous politicians, for the single purpose of looting the treasury to enrich themselves at the expense of the city. The courts, the prosecutors and the police were friends of the criminals, and there followed an era of plunder and crime almost unbelievable. The loot amounted in a few years to millions. Murders were committed, and murderers went unpunished. The limit was reached when James King was murdered by James P. Casey² for his vigorous denunciation of the crooks in his paper, "The Bulletin."

In the life of *Bret Harte* (H. C. Merwin, 1911), the author says, "The death of King did far more than his life could have done to purify the political and social atmosphere of California. On the day following the murder, the Vigilance Committee was organized, and an executive committee, consisting chiefly of those who had managed the first Vigilance Committee in 1851, was chosen as the practical ruler of the city. It was supported by a band of three thousand men, distributed in companies, armed, officered and well drilled.

²See Trial of Casey, p. 97.

For two months and a half the executive committee remained in office, exercising its power with marked judgment and moderation. Four men were hung, many were banished, and the city was purged. Having accomplished its work, the committee disbanded, but its members and sympathizers secured control of the municipal government through the ordinary legal channels, and for twenty years administered the affairs of the city with honesty and economy.”

Mr. H. H. Bancroft, the historian of California, after a study of the movement in all its phases, says:³ “After an earnest, and, I believe, an unbiased study of the subject with as much willingness at the outset to condemn as to praise, the secret workings of the institution, the motives which actuated the leading spirits of the San Francisco Vigilance Committee, as communicated to me in person, their purity of intent and action, the high moral responsibility which they felt resting upon them, and the conscientious care taken that impartial and passionless judgment should crown all their acts—with these as well as the existing necessities, the outer workings of the system and its successful results all before me, it is clear to my mind that not only was the movement justifiable, the principle a wise and righteous one, but that it was the only thing under the circumstances that could have saved society; and that the noble men who staked their honor, their lives and their property on the honest earnestness of their endeavor for the welfare of the community, are deserving the immortal gratitude of posterity. Like the senators Cineas found at Rome, they were an assembly of kings, above the law, who dealt out justice fresh and evenly balanced as from the hand of the Eternal.

³Popular Tribunals II, p. 686.

These are the lessons and further, free enlightened and progressive peoples will not always submit to ancient superstitions, however imposing the idea, or howsoever dear the names by which they have been accustomed to hear them called—they will have justice done.”

The trials of *James P. Casey*, *Charles Cora* (p. 97), *Joseph Hetherington* and *Philander Brace* (p. 117), serve to show the inflexible manner in which the Vigilance Committee acted. The proceedings were short, and the committee evidently believed them guilty. No witnesses for the defense were heard, and the sentence was death.

David S. Terry (p. 125), was a turbulent character, utterly unfit for his position as Chief Justice of the Supreme Court of California. In his very able speech, defending himself before the Vigilance Tribunal, he described himself as the very opposite of what his actions showed him to be. He was forever brawling, and, it seems, always went heavily armed. His end was what might have been expected from his actions throughout life. He was shot by the special guard sent from Washington with Justice Field, “and died with his boots on.” (See Hill-Sharon case, p. 465.)

The trial of *Edward McGowan* (p. 166), was a judicial farce. It is described by California’s historian, “Bancroft Popular Tribunals” (2-258) in these words: “Napa had acquired quite a reputation in those days for liberating murderers. It was quite the thing if you had killed a man, to go to Napa to be cleared. Lawyers, bar keepers and hotel proprietors all treated such fellows as favored them with their patronage, with every kindness, sending them their choicest viands free of charge. Ned’s friends were of a class that drank often. The saloon keepers could rely on them, they

were always thirsty. Jailer, judge and jury were all free and easy, kind and lenient. If the prisoner had money and spent it, he was a good fellow, and need have no fear. In this instance, with a gravity which challenges our credulity, the trial turned on the question of whether King was killed by Casey's pistol ball, or by the physician who did not cure him, and as there was no other plausible ground on which to cleanse Ned's skirts, they easily found two physicians who testified that, in their opinion, King died from the effects of treatment by other physicians, to whose course of practice they took exceptions. In other words, it was not the shooting which caused King's death, but the sickness which followed the shooting, and which the physician failed to cure.

It is highly probable that had the Vigilance Committee been able to capture McGowan, he would have been found guilty and hanged. McGowan's narrative shows him not a bad man at heart, but rather a type of the rough and ready adventurer of his period. A hard drinker, he contradicted all the theories of the prohibitionists, as he lived far beyond the time generally allotted by nature to the devotee of ice water. He was honest according to his lights, and according to the view of the machine politician, who did not regard profiteering at the public's expense as wrong. He was a faithful friend, a good parent, and a man that had the hosts of friends he had must have had some good in him. After he was acquitted and discharged, he returned to San Francisco, and he was seen at times on the streets of the city for nearly forty years afterwards, but he was a changed, and probably a harmless man." (Hittell, p. 647.)

The trial of *Laura Fair* (p. 197), is another case showing that "the wages of sin is death."

She was a woman of violent passions, the ruling ones being the pursuit of men and money, and she pursued both intelligently enough while health and beauty lasted.

In a way, perhaps, she really cared for Crittendon, and upon his final rejection of her, all the malignancy of her nature was aroused, and she planned to kill him. It was no doubt a premeditated murder, and so thought the jury. The trial lasted several weeks, with a strong array of counsel on both sides. The speeches to the jury were long and forceful arguments, commencing on April 15th, and ending on the 25th.

The defendant had a fair trial, and the verdict of guilty was deserved, but the Supreme Court seems to have had a different opinion, for a new trial was ordered because testimony showing the bad character of the defendant was admitted, and because the closing arguments of counsel were not delivered in the proper order. Thus, on technicalities which affected neither the guilt nor innocence of the accused, the work of months, costing the state thousands of dollars, was undone, the cause of justice defeated, and another murderer went unpunished.

It had been hard to secure a jury at the first trial, and on the second trial, when it came to finding twelve men who had not heard of the case and formed some kind of an opinion, it proved ten times harder. Practically every intelligent man in the entire state had read the newspapers and had heard the case discussed, so only the most stupid could qualify.

In Bancroft's *Popular Tribunals* (1-595), he says: "Many years have now elapsed since this discharge, during which time Mrs. Fair has often appeared upon the streets of San Francisco, apparently no more insane than others who have not killed their man. She

does not claim to have been insane long before the killing nor long after. Just how much woman's love and woman's hate, fired by alchemic passion into the metal jealousy is sufficient to place the female mind outside itself, let doctors and lawyers determine. But to discuss the question is idle in the extreme. No unbiased mind, of average intelligence, for a moment doubted that this woman was guilty of the crime of murder, such as that for which the law intended those committing it should die. The people were disappointed, indignant that the tigress should be let loose upon them; but patient and plodding as they are, they were now becoming accustomed to unquestioning obedience. Nevertheless, they could but feel humiliated under the issue of the affair. Yet there is nothing uncommon about it; with numberless quibbles and technicalities interposing between crime and punishment, with a profession whose members glory in their dexterity in clearing the guilty, with judges so blindly bound to form as to be senselessly indifferent to the righteousness of a cause, and with juries composed of men picked indiscriminately from shops and warehouses, whose minds are unaccustomed to weighing evidence, and who are easily swayed by their sympathies and influenced by their prejudices, we must expect that as a rule the guilty poor only will be punished while the money of the rich buys pardon. Every appearance of this woman upon the street is a commentary on the injustice of our judicial system."

And Mr. Young says in "A History," "There was not one thing to justify the second verdict of acquittal, or to excite any sympathy in her behalf, yet it represented a good deal of the public feeling in San Francisco. The cause of this was resentment against the victim, whose treatment of his wife called out the idea

“it served him right,” indicative of a revolt against the looseness of living that had long been condoned by a too tolerant community.”

The action of *Sarah Althea Hill* (p. 465), for divorce and alimony, and the actions that grew out of it are cases in which moral turpitude form the background. The prominence of Sharon, a man of great wealth, and a United States Senator, attracted the notice of newspapers throughout the country, which printed the proceedings of the trials from day to day, and which were eagerly read by the public.

Sarah Althea Hill was born in Cape Girardeau, Missouri. She went out to California in 1870, and engaged in speculation in stocks. She sprang into fame by filing suit for divorce and alimony from Senator William Sharon. She produced a written contract of marriage, and a San Francisco judge decided in her favor, and entered a decree declaring her his wife, granting her a divorce, giving her dower and alimony amounting to millions of dollars. A suit had begun by Sharon's lawyer in the United States Court, to have the alleged marriage contract declared a forgery and some time later Justice Field of the Supreme Court of the United States went from Washington to San Francisco to decide it. In the meantime, Judge D. S. Terry, who had been tried by the Vigilance Committee of 1856 for attempting to murder and other crimes, and who had killed Senator Broderick in a duel, had become one of Miss Hill's lawyers, and had made her his wife. He was a man of turbulent habits who always went armed.

When Justice Field entered the San Francisco court room to deliver his judgment, Terry and his wife were seated at the lawyers' table, but no sooner had he announced his decision that the alleged marriage con-

tract was a forgery than she sprang to her feet, declaring that he had been paid for it by the heirs of Sharon. Justice Field ordered her removed, when Terry, drawing a bowie knife, shouted that no one should lay hands on his wife. After a struggle, the marshals succeeded in overpowering him, and both were removed, and the next day sent to prison by the Justice for contempt of court. Justice Field returned to his duties in Washington, followed by the threats of Judge Terry that the state was not big enough to hold both of them, and that if he ever came back he would kill him. A year later it became Justice Field's duty to return to the California Circuit. He was urged by his friends not to risk his life by going to San Francisco, but he refused to be intimidated. The Federal Department of Justice sent with him David Neagle as a personal guard. Neagle had had considerable experience in the bad lands of Montana, and was considered a dead shot. After attending to some business in Los Angeles, Justice Field took the train to San Francisco, and during the night Terry and his wife boarded the same train, and the next morning as Justice Field and Neagle sat at the breakfast table at the station restaurant in a small town, Terry and his wife entered the room. They took seats at a table, but in a few minutes Terry rose, passed over to the table where Justice Fields sat, and struck him in the face. Before he could do anything more, a bullet from Neagle's pistol stretched him lifeless on the floor. Mrs. Terry then appeared at the door, having rushed to the car when Terry left his seat for her satchel, in which was her revolver.

The Hill-Sharon case, and the actions that followed it were sensational in the highest degree, but the result was, that after years of litigation, Sarah Althea

Hill never succeeded in recovering a single cent from the Nevada Senator or from his estate. After the death of her husband she became a mental wreck, and was finally committed to the insane asylum at Stockton, California, where she is still living in apparently good health, but hopelessly insane.

The trials of these cases are interesting aside from the sensational features abounding throughout.

Evidently Sharon feared that in the event of his death the claims of the adventuress might be made good against his estate, or he may have had in mind forestalling any action that might be brought in the state court, and hence his unusual suit to have the alleged contract of marriage declared a forgery. Judge Sawyer remarked at the outset, "There is no adequate remedy at law for complainant against the claim set up under the alleged contract, and no means at law to annul it at the suit of complainant." He then proceeded to state the reasons why the contract, if a forgery, should be cancelled. The case established a precedent.

Questions of jurisdiction, clashes between federal and state courts, pleas in abatement, writs of *habeas corpus*, commitments to jail for contempt, and attacks on judges make these several actions remarkable in the history of our courts, and all because of the avarice of a loose woman, and the immorality of a man in high position;

"Thus our pleasant vices
Are made the whips to scourge us."

The trial of *David Neagle* (p. 593), raised another interesting question of jurisdiction.

Neagle had been appointed a United States Marshal to guard the person of Justice Field on a trip to Cali-

fornia in the discharge of his judicial duties. When Terry assaulted the Justice, Neagle shot him, and was arrested by state authorities, charged with murder, and lodged in jail at Stockton.

He was released on a writ of *habeas corpus* by the United States Court. When the case came to trial, in rendering his decision, Judge Sawyer declared that a United States Judge, in the discharge of his official duties, is under the protection of the United States, whether he be in court, in chambers, on the street, or anywhere else. That Neagle, a United States marshal, accused of murder while defending Justice Field, should be tried in the United States Court.

The decision was affirmed by the United States Supreme Court, and the opinion delivered by Mr. Justice Miller, set forth that a United States marshal charged with an offence done in pursuance of a law of the United States, brought before a Federal Court by *habeas corpus* and discharged, cannot be afterwards tried in the state courts.

There appeared in the argument of this case in the Supreme Court of the United States with the Attorney-General, the two great lawyers, Joseph H. Choat and James C. Carter.

The criminal annals of the country present few more revolting crimes than those of *Durrant* (p. 636), convicted on purely circumstantial evidence for the murder of Blanche Lamont. The case has been denominated "the crime of the century." These cases present a study for criminologists to ascribe a motive. The murders were committed in a room in a church, and the bodies were hid, one in the church belfry, and the other in a closet. They were not discovered for a number of days.

Durrant was a young medical student, who bore an excellent character. He joined in the search for the missing girls, and for a long time was not suspected. Finally certain facts pointed to him. He was arrested and charged with both murders. The state's attorney concluded to try him first for the murder of Blanche Lamont. The trial lasted several weeks, and resulted in a verdict of guilty. After numberless appeals to higher courts, he was hung. It was claimed that after the trial commenced, additional evidence was found in the case of Minnie Williams which would have insured his conviction if tried for her murder.

Durrant was Assistant Superintendent of a Sunday School, and also its librarian. He was in his third year in a medical school, and his reputation among his professors and classmates was that of a young man of fair ability, and gentlemanly in his bearing. It was said that after his conviction had been affirmed, that he was offered \$5,000.00 by a prominent newspaper for a confession, but he refused the offer. Many said that his execution was a judicial murder.

He displayed great courage in meeting his fate. He declined stimulants, courteously said to the Warden that he would waive the reading of the death warrant to spare him an unpleasant duty, and remained cool and collected until the trap was sprung.

A. S. R.

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THE TRIAL OF VARIOUS CRIMINALS BY THE FIRST VIGILANCE COMMITTEE, SAN FRANCISCO, CALIFORNIA, 1851.

THE NARRATIVE.

With the discovery of gold in California, in 1848, San Francisco, which in the spring of that year was a village of 800 souls, speedily became a metropolis. From every part of the world came a multitude of searchers of the yellow metal and as they landed on their way to the mines their needs had to be supplied. In the spring of 1849 the population of the whole state was not more than 100,000 and in a few months the tide of emigration was found for the most part scattered along the river beds and gorges of the western slope of the Sierra Nevada. They were young, healthy and vigorous men. A few scamps and scoundrels but the far greater part, though rough in dress and not over nice in language, were honest, enterprising and industrious. Labor was dignified and honorable: social distinctions were entirely obliterated and every man passed for what he was. And though gambling and profanity and drinking were common failings, such things as thefts and robberies were almost unknown.¹

The first condition, says the biographer of one of its most famous literary men,² was almost an idyllic one. It was a period of honesty and good-will such as never existed before except in the imagination of Rousseau. There were few doors and no locks. Gold was left for days at a time unguarded and untouched. "A year ago," said the Sacramento *Transcript* in October, 1850, "a miner could have left his bag of dust exhibited to full view and absent himself a week. His tools might have remained unmolested in any ravine for

¹ Hittell (T. H.) *post* p. 14.

² Merwin (H. C.) *Life of Bret Harte*.

months and his goods and chattels, bed and bedding might have remained along the highway for an indefinite period without being stolen." There was much drinking, much gambling and some murders were committed in the heat of passion; but nowhere else in the world, except perhaps in the smaller villages of the United States, was property so safe as it was in California. "I have not heard," wrote Dr. Stillman in 1849, "of a theft or crime of any sort. Firearms are thrown aside as useless and are given away on the road." Grave disputes involving the title to vast wealth were settled by arbitration without the raising of a voice in anger or controversy. Even in Sacramento and San Francisco merchants left their goods in their canvas houses and tents, open to any who might choose to enter while they went to church or walked over the hills on Sundays. Their gold was equally unguarded and equally safe. "It was wonderful," said a pioneer early in the Fifties, "how well we got on in '49 without any sort of government beyond the universally sanctioned action of the people and I have often since questioned in my own mind if we might not have got on just the same ever since and saved all the money we have put out for thieving legislation and selfish office holders." Another pioneer wrote: "There is no law regarded here but the natural law of justice." California was lawless only in having no laws and needing none.

Here is a pen picture of San Francisco in 1849:

"The streets and Plaza were now almost constantly filled with a changing throng representing practically all the races of the world, many in their native costumes: Chinamen, Malays, Negroes, Abyssinians, Kanakas, Fiji-Islanders, Japanese, Russians, Turks, Jews, Spaniards, Mexicans, Peruvians, Chilenos, Englishmen, Italians, Frenchmen and Americans. Among this motley crowd (says Soule) scarcely two men from any state in the Union could be found dressed alike. The long-legged boot with every variety of colored top, the buckled-up trousers, serapes, cloaks, pea-jackets, broad brimmed slouch-hats and glazed hats. On one, if not on three sides of the Plaza were the open doors of the "hell" of San Francisco. On other portions stood hotels, stores and offices, the custom-house and courts of law. The little open space which was left to the crowds was occupied by a multitude of nondescript objects, by horses, mules and oxen dragging burdens along, boys at play, stalls

with sweetmeats, newspapers, prints, toys. The average age of the men was twenty-five and there were few if any over thirty. These men when they came in from the mines wore the usual red or blue flannel shirt, top boots almost concealing the trouser leg, a heavy leather belt in which two pistols and a knife were conspicuously displayed and on their heads a silk hat. This last, worn at all hours was a sort of advertisement of its proud possessor's good luck at the mines."³

But early in 1850 all this changed and in a short time instead of the days when a miner's property was sacred and his gold dust could be safely left in his open tent, it became necessary to guard it with as sedulous care as in any of the older countries of the earth. The cause of this was the influx by that time of criminals in great numbers from all parts of the world, particularly convicts from the British penal colonies of New South Wales and Van Dieman's Land. By the autumn of that year things had gone from bad to worse. There was hardly a crime from pocket-picking to murder that was not common; no one was secure in his property or his life. Thefts, robberies, burglaries, arsons and assassinations were of almost daily occurrence, while the courts with judges and officers both corrupt and inefficient, afforded no relief.

From this class there was organized a society known as The Hounds ostensibly for self protection, but really a band of self licensed robbers. They had a meeting place called Tammany Hall; they had their leaders to conduct their operations and apportion the spoils. They afterwards adopted the name of Regulators, and were so bold with their strength, as to attempt a military display; armed with revolver and bludgeon, they paraded the streets on Sunday with fife and drum and flying colors. Their outrages they usually perpetrated at dead midnight. They invaded stores, taverns, and houses, and demanded whatever they desired; but particularly upon foreigners was their conduct atrocious. They entered their tents or dwellings, robbed and pillaged them, and abused them in the most barbarous manner—often ending with murder. At this time there was scarcely any

³ Atherton (G.) *post* p. 18.

order in the town; no police force; and in the hot pursuit for gain it was 'every man take care of himself;' so that the Hounds had everything their own way, and were the dread of the community. Finally, however, a series of the most barbarous, destructive and daring attacks were perpetrated by these desperadoes, on a Sunday in July, which at last aroused the decent citizens to a determined counteraction. Upon this occasion, the Hounds, in broad daylight, attacked, pillaged, beat and abused the inoffensive foreigners, and wound up by making night hideous with their prowling yells, throughout the streets of the city. The following Monday the whole decent population rose, with indignation and determination, to put these vagabonds down and out. At this time San Francisco had no proper municipal organization. The people, therefore, had to do everything for themselves. They accordingly held a mass meeting; prominent men were appointed judges and counsel for prosecution and defense, and at once proceeded with the trial of the rioters. A jury found them guilty of riot, robbery, and assault with intent to kill. Two of the leaders, and most active and daring of the desperadoes, Roberts and Saunders, were sentenced to ten years imprisonment, with hard labor; others were sentenced to twelve months imprisonment, in whatever manner and place the government might direct. Thus ended this affair of the Hounds, and the city was for a while at peace.*

But by the spring of 1851 affairs had become so bad again as to be intolerable. The blackguards were in the ascendant. There was complete immunity from liability for crime. Since the cleansing of the city in the summer of 1850 by the expulsion of the so-called "Hounds" no punishments had been inflicted and none seemed likely to be inflicted. Meanwhile as the harvest for depredations grew wider and richer with every vessel that came in from the ocean and every express that arrived from the mines, it began to be found that a sort of combination was growing up among the scoundrels, having its ramifications extending upwards to some of the

* Smith (F. M.) *post* p. 74.

high officials and downwards to the pettiest pilferers and vagrants in the country.⁵

On the evening of February 10, two men entered the store of C. J. Jansen & Co., and asked to see some blankets, stating that they wished to purchase. Mr. Jansen proceeded to show the blankets to the parties, when he was violently struck with a slung-shot, which knocked him down. He was then most brutally beaten by the robbers, and left insensible, they supposing him to be dead. The robbers then proceeded to sack the store of two thousand dollars, and fled. The next day two parties were arrested who were supposed to be the robbers. Mr. Jansen identified one of them as James Stuart,

⁵ Hittell (T. H.), Vol. 3, p. 312. "There was a particular quarter of San Francisco noted as the rendezvous of these scamps. It lay around Clark's Point or about the lower ends of Pacific and Broadway streets. It was known as the Sydney-town of San Francisco, was full of low drinking and dance houses and was infamous for its constant scenes of lewdness, drunkenness and strife. It was dangerous even for the police to enter these lawless precincts and especially to attempt to make arrests unless supported by a very large force. When the great fires took place, bands of plunderers issued from these haunts of dissipation to seize money or whatever valuables they could secure and carry away. With their plunder they would retreat to their dens and defy detection or apprehension. Individuals belonging to their number were on various occasions seen in the act of kindling inflammable materials in outhouses and secret places while the subsequent confessions of numerous criminals left no doubt of the frequent attempts to fire the city, some of which had unfortunately been too successful. At the same time whenever objection was made or resistance offered to these outrages, the bowie knife or revolver quieted opposition and left the robbers practically unmolested. If arrests were made the prisons were insecure and there was little or no difficulty in effecting escapes. In most cases the trouble of escaping however was avoided by furnishing bail; and as the bail was worthless it was easy to procure any amount of it. In the very rare cases in which criminals were ultimately brought to trial, convictions were next to impossible. Between venal judges, corrupt officials, dishonest jurors, legal technicalities, perjuries, removals of witnesses and suppressions of evidence, acquittals were practically sure. There was no fear whatever of the law because there was no danger that any one could be found guilty or punished: on the contrary offenders came to regard a criminal prosecution as a farce, dull and dreary perhaps, but perfectly harmless and looked upon courts as a protection against the possible infiction of private vengeance." *Id.*

a notorious criminal who had escaped from the jail at Sacramento where he was awaiting trial for the murder of Sheriff Moore of Auburn, but was in doubt in regard to the other named Windred.

The first said that his name was Thomas Burdue and both denied their guilt. During their examination in court a crowd of 5000 people attempted to seize and lynch them but were repulsed by the local militia and Mayor Geary⁶ addressed the mob imploring them to let the law take its course. But after a public meeting called by leading citizens it was agreed that they should be tried by a Popular Tribunal and a jury of twelve was selected. J. R. Spence was appointed presiding judge with H. R. Bowie and Charles L. Ross, associates; John E. Townes, sheriff, W. A. Jones, clerk, William T. Coleman,⁷ Prosecuting Attorney and D. O. Shattuck and Hall McAllister,⁸ counsel for the prisoners. The witnesses were examined, arguments made and a charge given by the presiding judge. But the jury could not agree and the prisoners were handed back to the authorities. Windred escaped from custody but the alleged Stuart was sent to Marysville where he was con-

⁶ GEARY, JOHN WHITE (1819-1873). Born Westmoreland Co. Pa. Educated at Jefferson Coll. Studied and practised engineering and served in the Mexican War; removed to San Francisco 1847 and became its first Alcalde, Post master and Mayor; returned to Pennsylvania, 1852; Territorial Governor of Kansas, 1856; Major General in Civil War and Military Governor of Savannah; Governor of Pa. 1866-1873.

⁷ See *post*, p. 61.

⁸ McALLISTER, HALL (1826-1888). Born in Georgia and settled in San Francisco 1849. (His father Matthew Hall McAllister, after practising law in Savannah for nearly thirty years, followed his son to California in 1850 and practised law in San Francisco until he was appointed by President Pierce the first United States Circuit judge for California). He soon acquired a large practice and for years was regarded as the leader of the city bar. His name runs through 80 volumes of the California reports. He acquired great wealth and honors in his adopted state and died at his country residence at San Raphael. His son became a federal judge in Alaska. "It would be impossible to attempt to name all of the most learned among our early California lawyers, but first among those whom the writer met and knew was Hall McAllister. All in all, he was the ablest lawyer I ever knew." M. M. Estee, in Shuck's hist., Bench and Bar of Cal. 391.

victed of the murder of Sheriff Moore and sentenced to be hanged.⁹

The San Francisco Vigilance Committee of 1851 had its birth in a conference between three of its leading citizens, James Neal, George Oakes and Samuel Brannan,¹⁰ on June 8,

⁹ When the real James Stuart was discovered The Vigilance Committee notified the authorities and his sentence was annulled and he was released. On his return to San Francisco, a large subscription was raised and paid to him as a compensation for the suffering to which he had been unjustly subjected.

¹⁰ Brannan, Samuel (1819-1889). Born, Saco, Maine; removed to Lake County, O., 1833, where he became apprenticed in letterpress printing; in 1836-7 went into great land speculation, but came out penniless. In 1837 resumed printing trade and travelled the country as a journeyman printer. In 1842 joined the Mormons and published for them in New York a weekly paper, the "New York Messenger." In 1846 started a project for a colony (mostly Mormons) in California. On July 31, 1846, landed in San Francisco (then "Yerba Buena"). Erected the same year two flour-mills in the existing "Clay street." In Jan. 1847 projected and published a weekly newspaper the "California Star," the first journal to appear in San Francisco and the parent of the "Alta California;" in the fall of 1847 started a store at Sutter's Fort under the name of "C. C. Smith & Co.," the first establishment of its kind in Sacramento Valley; in the spring of 1848 bought out Smith and changed firm name to "Brannan & Co." In 1849 returned to San Francisco and carried on business in China merchandise as "Osborn & Brannan," and in that year helped to extirpate the Hounds from the town. A member of first regular Town-Council (1849). President of "Vigilance Committee" (1851). State Senator 1853. From 1857 to 1864 was the richest man in California. Presidential Elect. (Republican 1864). In 1866 suffered financial reverses; went to Mexico City, loaned Mexican government money during Maximilian war, equipped a Company of Americans who served the republic as the "Brannan Contingent." Returned to California and died at Escondido, San Diego Co. See Soule, F., "Annals of San Francisco, 1855." Davis, W. J., "Illustrated History of Sacramento County, 1890." San Francisco Chronicle, May 7, 1889.

"To Mr. Brannan the highest praise is due. Peculiar as he was in some respects, I cannot but regard his connection with the first Vigilance Committee as the brightest epoch of his eventful life; and as long as society holds its course in San Francisco his name should be held in honored and grateful remembrance. With the most cheerful recklessness he threw his life and wealth into the scale, anything and every thing he possessed was at the disposal of the Committee free of any charge;" Popular Tribunals (Bancroft) I-209.

"Sam Brannan men called him, and sometimes plain Sam. * * *

at which they agreed to call a meeting of citizens who stood for law and order and whose discretion could be relied on, at the California Engine House the next day. A large number responded, the name Vigilance Committee was selected,¹¹ and

Though for a time one of the most prominent men in California, one of the wealthiest—I do not say one of the most highly esteemed—the subriquet Sam was used instinctively as the synonym of the individual. It was only once within my recollection when he assumed the role of banker, that these titles of respectability were affected, and then the sensitive public seemed shy of him and the project was abandoned. Sam Brannan, banker, would have been a tangible reality, however hirsute or churlish he may have been, but Samuel Brannan Esquire, Banker was a social myth, a far-away, incorporeal thing. When Sam was a saint appellations of reverence were not out of place, but saturated with the avarice and strong drink incident to California, since his arrival here Sam has been no saint. It is true he followed preaching as a Mormon leader, priest or prophet, for a short time after landing at San Francisco, but when the enlightened brethren declined the further payment of tithes he cursed them, told them to go to hell while he went—his way. Monogamous or polygamous doctrines never troubled him much, judging from his flaming devotion to the tender passion; in fact in the not wholly pleasurable scrutiny of his life and character my labors have forced upon me, judging from the record since 1848 and from practices notorious for more than a quarter of a century, I have often wondered what Sam did preach when he was a Mormon elder. But as Casey said of his Sing Sing experiences, Sam's early piety should not now be raked up against him. He was a leader in Israel as long as it paid; and all wise leaders lay down their arms when the remuneration fails, for in religion as in war, money is half the battle. Yet with all these repulsive qualities flung in with other scarcely more palatable ingredients to the composition of this character, the occasion of 1851, as I have before remarked, needed just such an instrument. Analyze still closer the qualities here present and see how well they fit the exigency. Principle we regard as a nobler and more desirable quality than unbridled passion; yet principle alone would not have struck the sudden blow that stunned the monster of 1851. An evenly balanced mind wherein justice calmly sits and soothing piety and all the sweet amenities of life find welcome, we look upon as more lovely than the ruling power of man roused to vindictive hate and bloody revenge; and yet neither justice, piety, nor civility alone would have delivered the city in 1851. The disease was passionate, hateful, bloody; so were the times, and bloody, hateful, passionate must be the cure. To odious, soul-bespattered, spiteful Sam the commonwealth of California owes much." II Id., 116.

¹¹ The origin of the term Vigilance Committee, says Bancroft, was spontaneous. At the first meeting the question of a name arose.

a constitution¹² and by-laws adopted and signed with more

One member suggested Regulators but this word smacked too much of the Hounds period. Secret Committee was proposed and rejected, and so was Committee of Public Safety which found some supporters as conveying the idea of protection that the association sought to throw around every citizen. But when the term Committee of Vigilance was proposed it took precedence at once, embodying the sentiment of watchfulness with those of circumspection, care and protection. It was unanimously adopted and as the expression of a unique human association will so stand to the end of time. Popular Tribunals I-207.

¹² Whereas, it has become apparent to the citizens of San Francisco that there is no security for life and property, either under the regulations of society as it at present exists, or under the law as now administered; therefore, the citizens, whose names are hereunto attached, do unite themselves into an association for the maintenance of the peace and good order of society, and the preservation of the lives and property of the citizens of San Francisco, and do bind ourselves, each unto the other, to do and perform every lawful act for the maintenance of law and order, and to sustain the laws when faithfully and properly administered; but we are determined that no thief, burglar, incendiary or assassin, shall escape punishment, either by the quibbles of the law, the insecurity of prisons, or a laxity of those who pretend to administer justice. And to secure the objects of this association we do hereby agree:

1. That the name and style of the association shall be the Committee of Vigilance, for the protection of the lives and property of the citizens and residents of the city of San Francisco.

2. That there shall be a room selected for the meeting and deliberation of this committee, at which there shall be one or more members of the committee, appointed for that purpose, in constant attendance, at all hours of the day and night, to receive the report of any member of the association, or of any other person or persons whatsoever, of any act of violence done to the person or property of any citizen of San Francisco; and if in the judgment of the member or members of the committee present, it be such an act as justifies the interference of the committee, either in aiding in the execution of the laws, or the prompt and summary punishment of the offender, the committee shall be at once assembled for the purpose of taking such action as a majority of the committee when assembled shall determine upon.

3. That it shall be the duty of any member or members of the committee on duty at the committee room, whenever a general assemblage of the committee is deemed necessary, to cause a call to be made by two strokes upon a bell, which shall be repeated with a pause of one minute, between each alarm. The alarm to be struck until ordered to be stopped.

4. That when the committee have assembled for action, the decision of a majority present shall be binding upon the whole

than 200 names.¹³ They established a watchword and a signal-taps on the California Fire Company's bell.

committee, and that those members of the committee whose names are hereunto attached, do pledge their honor, and hereby bind themselves, to defend and sustain each other in carrying out the determined action of this committee at the hazard of their lives and their fortunes.

5. That there shall be chosen monthly a president, secretary and treasurer, and it shall be the duty of the secretary to detail the members required to be in daily attendance at the committee room.

A sergeant-at-arms shall be appointed, whose duty it shall be to notify such members of their details for duty. The sergeant-at-arms shall reside at and be in constant attendance at the committee room.

There shall be a standing committee of finance, and qualification, consisting of five each, and no person shall be admitted a member of this association unless he be a respectable citizen, and approved of by the committee on qualification before admission."

¹³Selim Woodworth was the first President of the General Committee and Samuel Brannan the first President of the Executive Committee. Isaac Bluxome, jr, was secretary and Eugene Delesert, Treasurer. Brannan's term of office expired in three months; then Stephen Payran was made President of the Executive Committee and after him Gerritt W. Ryckman. * * * In July 1851 Mr. Brannan sent in his resignation as President of the Association and as a member of the Executive Committee. It seems that some sharp words had passed between him and McDuffie, sergeant at arms. Mr. Brannan was just the man to incite a revolution but he was not a man to conduct one * * * The cause owed much to Mr. Brannan and that it needed him less now was not sufficient reason in the eyes of his associates that he should be sacrificed to his own irascibility. So a committee was appointed to heal the feud between the officers. * * * Payran was of the Executive Committee one of the leading spirits. He was a man of dignity and courage and ready alike with tongue and pen. He had been a copyist in Philadelphia and took down testimony rapidly and easily. * * * Selim Woodworth was more than man in some things and less than man in others. In certain directions he seemed inspired with superhuman instincts and energy while in others he was but a boy. He was eminently a good fellow and of tender sensibilities * * * but when it came to duty, suddenly all nonsense disappeared and strength and courage came in all the glorious perfections of developed manhood. In money matters he was the soul of honor. * * * George W. Ryckman the third President was from Albany N. Y. and came to California on the steamer Unicorn, October, 1849.

I never saw in any human being such reckless indifference to consequences in regard to the penalties to which he subjected himself in participating in such a movement as was manifest in Ryckman. He was well advanced in years when I first saw him

The very next day a brazen robbery occurred—the stealing of a safe containing money from a mercantile office by a notorious criminal, named John Jenkins. The thief was caught, the alarm brought the members to their quarters, and the Executive Committee, of which Mr. Brannan was Chair-

and though his voice was often tremulous in our conversations, his whole frame shook with indignant energy when he talked of the threats and intimidations which were constantly thrown at him. He possessed a wonderful faculty for gaining the confidence of the accused, of winning them over to make a free confession of their guilt and that without committing himself by promise of pardon or otherwise. The very frankness of his deep determination was contagious. "I will tell you, Mr. Ryckman," said one poor fellow to him, "for I know you will do right, but all hell couldn't open my mouth to those others." His very presence inspired faith and invited confidence. His broad face and truthful searching eye, his features, massive with weighty purpose and benignant rectitude; his voice low, kind but resolute; his step, his bearing, all were indictative of candor, singleness of heart and conscientiousness, obdurate, but sympathetic and unselfish. Thus it was that while he hanged these men, they not only feared and respected him but they almost loved him. If Mr. Ryckman had the say about it they felt in some way they would be freed; and yet this kind inquisitor of theirs was usually the first to tell them they deserved to hang and should be hanged. While inactive Mr. Ryckman devoted almost his entire time to the work of the committee. During the nine months from the first of June he devoted scarcely five whole days to his own private business. More than once he was dogged about the streets by those who had threatened to assassinate him but he never was for a moment off his guard. Sometimes he would walk straight up to the scoundrels and warn them to leave the city instantly and they usually obeyed. They were much more afraid of him than he was of them. He had a way of disguising himself and mingling with them and then suddenly discovering himself. Mr. Ryckman did not regard the new organization in 1856 with favor. Perhaps a tinge of jealousy colored its character in his eyes. Or it may be, like Robespierre, his willingness to participate in capital punishments increased with age. But society had changed since 1851 and in 1856 a new element with new leaders marshalled to the front. "The Vigilance Committee of '56 assumed to be the vigilance of '51," he said to me one day, "but it was not. They came to me to join them and bring the old colors but I would do neither. I went down to one of their meetings and I told them they needed some one to govern them instead of their assuming the government of others. I got out of patience with their silky, milky way of managing Terry's case. He ought to have been hanged. I rebuked Coleman very severely for some timid act in the '56 Committee." Bancroft I, p. 250.

man, immediately tried and convicted him and sentenced him to be hanged in an hour—the members of the Vigilance Committee by the score waiting in front of the building for the verdict. Mr. Brannan appeared, announced the result and asked, “Does the action of your Committee meet your approval?” A chorus of ayes was the response. And on the Plaza in front of the adobe Custom House, the prisoner was hanged, a hundred hands helping to pull the rope.

The hanging of Jenkins had a most salutary effect on the criminal class and many of them fled from the city. But some individuals having thrown obstacles in the way of the committee, the following public notice was issued by that body:

VIGILANCE COMMITTEE ROOM

It having become necessary to the peace and quiet of this community, that all criminals and abettors in crime, should be driven from among us; no good citizen, having the welfare of San Francisco at heart, will deny the Committee of Vigilance such information as will enable them to carry out the above object. Nor will they interfere with said committee when they may deem it best to search any premises for suspicious characters or stolen property; therefore *Resolved*, That we, the Vigilance Committee, claim to ourselves the right to enter any person or person's premises, when we have good reason to believe that we shall find evidence to substantiate and carry out the object of this body. And further, deeming ourselves engaged in good and just cause, *we intend to maintain it.*

By Order of

Vigilance Committee, No. 67, Secretary.

In July the real James Stuart fell into the hands of the Committee. Brought before it for trial he confessed to a number of crimes and was sentenced to be hanged.¹⁴

Colonel Jonathan D. Stevenson addressed the mass of people assembled in front of the Committee Rooms, stating the facts, the prisoner's history and the penalty imposed. To

¹⁴ He was an Englishman and had been transported at an early age to Australia, for forgery. From there he had escaped and wandered from place to place, pursuing a career of crime, until he finally reached California and during his short residence here he was supposed to have committed more crimes than any other scoundrel unhanged.” Hittell, p. 324.

his inquiry, Do you approve his sentence and his immediate execution? a great chorus of yes was the response. The prisoner was then allowed two hours' grace, during which time the committee, four hundred in number, sat grimly on their seats. They felt the responsibility of the task before them, but did not hesitate. The condemned was led before them under a strong guard, the rest of the committee following in orderly line behind. A great crowd of citizens followed. He was taken down Battery street to the end of the Market street wharf where every thing had been previously arranged for the execution. The fatal rope was adjusted and the condemned hoisted up with a derrick.

Samuel Whittaker and Robert McKenzie were the next to suffer. They were old associates of Stuart and after a trial and conviction of various heinous crimes, of which they finally confessed their guilt, they were sentenced to be hanged. But before the sentence could be carried out they were taken from the committee by the sheriff and lodged in the City jail. But on Sunday, August 24, while the prisoners in the county jail were attending religious services an armed party, consisting of thirty-six members of the Committee, made a forcible entry into the midst of the congregation. There was some slight show of defense by the jailors and guards, but the Vigilantes were irresistible. They asked for nothing and wanted nothing except Whittaker and McKenzie, and seizing them they hurried them out into the street and into a coach that was in waiting and drove off at full speed to the vigilance headquarters. At the same time the bell of Monumental Engine House began tolling rapidly and loudly—a stroke that was well understood to mean a vigilance execution. At the sound immense crowds from every direction poured into the streets about the committee rooms. Over two of the openings intended for the reception of goods into the second story, projected beams and at the end of each of these beams was a block and tackle. The prisoners were hanged by the neck from these beams—the loose ends of the tackle being held by members of the Committee inside the building. Six thousand persons witnessed the execution, and as the wretches were

pushed out of the openings and swung off, there was a loud and general shout of satisfaction from the multitude.¹⁵

The next grand jury, convinced that the Vigilance Committee was not only too powerful to be seriously interfered with in the city of San Francisco, but that it had the moral support of the better classes of people throughout the state, said in its report:

"When we recall the delays, inefficient, and we believe that with truth it may be said, the corrupt administration of the law, the incapacity and indifference of those who are its sworn guardians and ministers, the frequent disregard of duty, and impatience while attending to perform, manifested by *some* of our judges; the many notorious villains who have gone unpunished, lead us to the belief that the association of Vigilantes have been governed by a feeling of opposition to the manner in which the law has been performed, rather than a disregard to the law itself. * * * The grand jurors whilst they deplore their acts, believe that the Vigilance Committee, at great personal sacrifice to themselves, have been influenced by no malice, personal or private; that their only incentive was the welfare of the community. To the members of the Vigilance Committee we are indebted for much valuable information and many important witnesses."

Murder and theft occupied the chief attention of the Committee, but idlers and suspected persons were narrowly watched. Trials were not always given; the known bad characters were notified to leave; if they did not they were at once shipped to Australia or some other foreign port. And it watched the incoming vessels and sent back to where they came from, all persons presumed to be criminals.

The necessity of protection against the criminal classes which the regularly constituted tribunals were unable to afford, was felt in every quarter; and the methodical completeness and efficiency of the San Francisco organization induced many of the towns of the interior, among them Sacramento, Stockton, Marysville, San Jose and various mining camps, to organize committees of their own which immediately opened communication and affiliated with the San Francisco committee. In a short time there was a complete network

¹⁵ Hittell (T. H.), 329.

of information and service between different parts of the country and many of the scamps who had been driven from San Francisco and sought safety in the mines, either met their fate there or were driven further. And for a few years at least, there was some security and safety for life and property in San Francisco.

Soon after this the Committee vacated its rooms and ceased to hold meetings or further to act. But it did not formally dissolve and for the next five years and until it was in effect revived, under the demands of new exigencies by the formation of the Second Committee of 1856 it was well understood that its members, while willing to leave the further administration of criminal justice in the hands of the regular authorities, were nevertheless ready at any time, if public necessity required, to return to their vacated rooms, form again into ranks of citizen soldiery and organize anew their tribunals that recognized no delays and knew no fear or favor.¹⁶

¹⁶ Hittell (T. H.) *ante*.

THE TRIAL OF CHARLES CORA FOR THE MURDER OF WILLIAM H. RICHARSON, SAN FRANCISCO, CALIFORNIA, 1856.

THE NARRATIVE.

On the evening of November 17, 1855, General William H. Richardson,¹ United States Marshal for California, was shot and instantly killed by Charles Cora,² a gambler on Clay street, San Francisco. There had been a quarrel between the two men over the circumstances of their attendance at the theatre a few nights before. Cora had brought a notorious woman of wealth who went by his name,³ into the dress-circle where Richardson was seated with his wife, and the General had expressed his indignation in the hearing of Cora and the woman.⁴ The character and standing of the victim as opposed to that of the slayer made the homicide peculiarly odious in the popular mind; the press denounced it with much heat⁵

¹ He was born in 1823 in Washington D. C. and came to California with the Pioneers. He became Quarter Master General of the State Militia in 1851 and was a delegate to the Democratic National Convention that nominated President Pierce in 1852. In March 1853 he was appointed United States Marshal for the District of Northern California.

² He was an Italian.

³ Though she called herself Belle Cora her name was Arabella Ryan. She was a native of Baltimore, Md., and at the time was 29 years old. She continued her residence and occupation in San Francisco until her death in February 1862. A short history of her life was published and circulated. See, *Eloquence of the Far West*, Shuck (O. T.) p. 291.

⁴ This fact was not brought out in the evidence on the trial, but was well understood at the time. See Bancroft (H. H.) *Popular Tribunals*, Vol. II; Shuck (O. T.) *Eloquence of the Far West*, p. 287.

⁵ "The cowardly-like assassination on Saturday of the U. S. Marshal, General Richardson, on one of our public thoroughfares and

and Cora was for a time hidden by the authorities outside the city as they feared he would be lynched. When he was brought to trial it was found that the subscriptions of his fellow gamblers and the lavish liberality of his paramour had

within a few yards of Montgomery street, calls for some expression of opinion from us. We are told by those who knew the deceased, that he was a good citizen and an efficient officer, ever diligent in the discharge of his duties. Cora was an Italian assassin and a gambler. The excitement on Saturday night was immense, and strongly reminded us of the old Vigilance Committee times. We passed through those times and scenes, when an incensed and outraged people having no faith in the corrupt ministers of the law, took the administration of public justice in their own hands, and inflicted merited punishment on the heads of some of the murderers of those days. It was a fearful responsibility, and one that we do not wish again to see resorted to if to be avoided. We think there is no necessity now for any such demonstration, and if the sheriffs and the jury will but do their duty, we are confident the Court will do what is right. In the present case all depends on the action of the Sheriff and the jury. Let there be an impartial jury, and give the assassin a fair trial. Thus acted the Vigilance Committee. If he be guilty *he must be hung!* It is due to this community that he should be. The Court, we are satisfied, will be all right, and we warn the sheriff and the gambler friends of this man Cora, that any attempt at rescuing him either by a packed jury or by influence of gold, will raise such feeling in this community as will end with more fearful consequences than attended the expulsion of such parties from Vicksburg.

And now we want to know why the laws in this State against gambling are not enforced? The officers know very well that these hells still exist. We heard of a case a few days ago, of a man who was discharged from his work for the simple reason that, though a good workman, his employer could not rely upon him. Gambling with him was a mania. He acknowledged his inability to control himself. His employer, instead of paying him, handed his wages every week to the wife, but this victim could not resist the temptation, and finally his employer was forced to discharge him. Thus by his folly have his wife and children been deprived of the fruits of his labor and left to get along as they can. And all owing to the temptation of these hells of iniquity. Does any one, do the officers of the law wish to know where this den is? We answer in the upper story of Stephen Whipple's building on Commercial street.

And now about the disreputable houses, at one of which this man Cora was "kept." Have the Committee of Aldermen, appointed for that purpose, agreed on their report? We await their action, and that action is needed promptly. General Richardson was

not only secured a brilliant array of lawyers, but had hired and drilled a number of witnesses (bar-keepers, gamblers and others of that ilk, all of whom disappeared at his second trial before the Vigilance Committee) to testify that the Marshal was about to kill the gambler when the gambler killed the Marshal. Among his counsel was the orator of the Pacific, who when he discovered that the "smoldering virtue of the citizens was growing a hotter white every instant," tried to withdraw. But having paid him a heavy retainer, Belle Cora held him to his bargain.

Trapped by a woman, Baker made up his mind to save the murderer if words could do it. His closing speech was a master-piece, by the standards of the time, and carried away by his own eloquence, he held her up as a model for all men to admire; picturing her as wronged, misunderstood and unfortunate but admirable. Her devotion to her lover redeemed her frailty in the eyes of all men, particularly of himself as he wept as he paid her this tribute.⁶ This speech enraged the public and drove him for a time from the State. But some of the jury, confused by the pleas of the lawyers and others influenced by the solid arguments from the courtesan's purse, after being out twenty-four hours, refused to convict him of murder, the seven that were above being "fixed," voting for murder, the other five for manslaughter or acquittal.

the last victim. Who will be the next? Let this man Cora, and the gamblers generally with the disreputable houses meet their deserts, and there will be no need of immigration meetings. The honest and industrious from every land will flock to our shores. It is not the murder of Gen. Richardson that will prevent them, for such an occurrence might have happened on Wall street or State street, but it is the sure and prompt punishment of the guilty murderer, that will create confidence abroad, and fill our cities and mining gulches with an honest and industrious population from every land."—*Daily Evening Bulletin*, Nov. 19, 1855.

⁶ Atherton (G.) p. 180.

THE TRIAL.⁷

In the Criminal Court for the Fourth District, San Francisco, California, January 1856.

HON. JOHN S. HAGER,⁸ Judge.

December 1, 1855.

On Sunday November 18, 1855, the Coroner's jury returned

⁷ *Bibliography.* "San Francisco Vigilance Committee of '56, with some interesting sketches of events succeeding 1846. Edited by Frank Meriweather Smith. San Francisco, Cal. Barry, Baird & Co. Printers & Publishers, 419 Sacramento St. 1883."

"History of California, by Theodore H. Hittell. 4 vols. San Francisco, Cal. N. J. Stone & Co. 1897."

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"The Vigilance Committee of 1856. By a Pioneer California Journalist, San Francisco, 1887."

"Narrative of Edward McGowan, San Francisco, 1857." Post p. 167.

"True and Minute History of the Assassination of James King of Wm. San Francisco, 1856."

"Ms. Record of Minutes of Ex. Comm. of Committee of Vigilance of San Francisco."

"Personal Recollections of the Vigilance Committee (Dr. W. O. Ayres) Overland Monthly, August, 1886."

"Statement of William T. Coleman. Century Magazine, November 1891." This article by the head of the Second Vigilance committee has a number of most interesting engravings on wood, viz: a portrait of King of William, from a daguerreotype owned by his son, a portrait of Mr. Coleman, views of the surrender of Cora and Casey to the Committee, of the execution of Hetherington and Brace in front of Ft. Gunnybags, of the meeting of the Vigilance Committee in Portsmouth Square. 1856.

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"California, An Intimate History, by Gertrude Atherton, Illustrated. Harper Brothers, New York & London, MCMXIV."

"The Gray Dawn, by Stewart Edward White, Illustrated by Thomas Fogarty, Garden City, N. Y. Doubleday Page & Co. 1915."

* "History of the Pacific States of North America by Hubert Howe Bancroft. Popular Tribunals. 2 vols. San Francisco; The History Company, Publishers, 1887."

"Eloquence of the Far West. O. T. Shuck, San Francisco; Published by the Author, 1899."

⁸ HAGER, JOHN S. (1818-1890). Born in New Jersey. Graduated

the following verdict: That the said William H. Richardson came to his death by a pistol shot fired from the hands of one Charles Cora, on the night of Saturday, Nov. 17th, between the hours of 6 and 7 o'clock; and that the said Richardson went in company with the said Charles Cora to a place near the corner of Clay and Leidesdorff streets, in the city of San Francisco, in front of a store occupied by Fox & O'Connor, and that the said Richardson was then deprived of his life in the manner aforesaid by the said Cora; and from the facts produced the jury believe that the said act was premeditated and that there was nothing to mitigate the same.

The Grand jury having returned an indictment in accordance with this finding, the prisoner was brought into court today.⁹

Henry H. Byrne,¹⁰ District Attorney; *E. R. Carpenter*;

Princeton, 1836 (afterwards given the Honorary degree of LL. D.). Studied law at Morristown with Senator J. W. Miller. Practiced law there until he removed to California in 1849. First was a miner, then a merchant, but in 1850 went to San Francisco and began practice of law; elected State Senator and later Judge of the Fourth Judicial District (1855-1861); State Senator again, 1865; United States Senator 1873. Regent State University. President Charter Freeholders, 1882. Collector of Customs, San Francisco (1885-1888). In 1872 he married a daughter of James H. Lucas, one of the founders of St. Louis. Died in San Francisco.

⁹ The prisoner was brought into Court by Sheriff Scannell in a closed carriage and the whole ceremony of arraignment in the Court-room was a matter of extreme privacy. He looked easy and self-possessed, was dressed in a fancy style; a richly figured velvet vest and light sporting-kids, which together with an overcoat thrown lightly over his shoulders, a neatly trimmed moustache and his non-chalant air, made up quite a characteristic sport. He occupied one of the chairs of the jury box. Smith (F. M.) p. 18.

¹⁰ BYRNE, HENRY HERBERT (1824-1872). Born in New York City and educated at a French Catholic College in Canada. Admitted to New York Bar and removed to San Francisco, 1850. He became one of the leaders of the bar and his early death was much regretted. "Excepting James King of William, David C. Broderick, General E. D. Baker and Thomas Starr King, no man was ever buried in San Francisco amid such general manifestations of popular sorrow. Personally he was perhaps the most popular man who ever lived in our metropolis. Baker dazzled the multitude from an eminence; Byrne thrilled them by actual contact. His funeral procession embraced hundreds of the poorer class in humble vehicles and on foot." Hist. Bench and Bar of California. Shuck (Oscar T.) 1901.

*Alexander Campbell*¹¹; *Samuel W. Inge*¹² and *Charles H. S. Williams*, for the People. *Edward D. Baker*,¹³ *James A. Mc-*

¹¹ CAMPBELL, ALEXANDER (1820-1902). Born in Jamaica; was educated in England and settled in New York, where he studied law and was admitted to bar in 1842. City Att'y of Brooklyn and Dist. Atty. Kings Co. Removed to California 1849 and was soon elected a County Judge of San Francisco. Resumed practice of law until the organization of the Vigilance Committee, when on account of his opposition to it, he withdrew to the Sandwich Islands. Returned to San Francisco in 1857; from that time until he removed to Arizona in 1881 he was a conspicuous member of the Metropolitan Bar and was engaged in most of the great trials, civil and criminal, in that city. Returned to California in 1886 where he practiced law at Los Angeles until his death.

¹² INGE, SAMUEL WILLIAMS (1817-1867). Born, Warren Co., N. C.; removed to Green Co., Ala. Studied in public schools and Alabama State Univ. Studied law at Erie and admitted to the bar. Then began practice in Livingston Co., Ala., 1844. Member of Ala. House (For Sumter) 1844-45. Member 30th and 31st Congresses (1847-1851). Participated in duel with Edward Stanley, representative from North Carolina (duel took place while in office, on the Bladensburg grounds near Washington; neither of the participants were seriously injured). After 1851, resumed practice. U. S. Atty. North. dis. Cal. 1853. Died San Francisco. See Biog. Cong. direct., 1774-1911. * * * 1913. Nat. cyclo. Amer. biogr., 1904.

¹³ BAKER, EDWARD DICKINSON (1811-1861). Born London England; his parents emigrated to Philadelphia when he was five years old, where he was educated, removing to Carrollton in 1828; became a major in the Black Hawk War. Member of Congress (Springfield Dist.) Ill. 1845. Raised a regiment which he commanded in the Mexican War and was at the battle of Cerro Gordo. Member of Congress again, 1849 and was then the first orator in Illinois; he became Superintendent of the construction of the Panama Railroad in 1851. Removed to San Francisco in 1852 where he practiced law until 1860 when he removed to Oregon, being a year later elected United States senator. Resigned in one year to enter the Civil War as Colonel where he fell in his first battle. He was a great orator. Outside of his speeches at the bar his most famous addresses are: Dedication of Lone Mountain Cemetery (1854), Broderick's Funeral (1859), Atlantic Cable (1858), American Theatre Patrotic Address 1860, and Reply to Breckinridge. See "Eloquence of the Far West" (Shuck, Oscar T.), 1899.

In the Fall of the year 1820 a man by the name of Baker came to St. Louis from England. He professed to be a Lancashire school-master and had quite a large family. He was the father of Edward D. Baker. As the family were very poor, the old gentleman bought a horse and cart and put his son Edward, then a boy about fourteen, to hauling dirt and doing other small jobs about town for the support of the family. While engaged in this business young Baker

Dougall; ¹⁴ *George F. James* and *Frank Tilford*, for the prisoner.

happened to stop his horse on Market street near Third, where the St. Louis Circuit Court was then being held in an old Baptist church. The St. Clair Hotel now (1880) occupies the site. He had never before been where a Court was in session. He stepped inside the door just at the time when Edward Bates, then the most distinguished speaker at the St. Louis bar (or perhaps in the State of Missouri) was addressing a jury. Young Baker, unlettered, uncultivated and uneducated, had never heard anything like it before. Bate's persuasive eloquence seemed to win upon him and his whole soul was wound up to the highest pitch of admiration and delight. He listened to Bate's speech throughout and it fixed his character for life. As soon as Bates had finished his argument young Baker went home and told his father that he did not intend to drive a cart any more. "What are you going to do?" asked his father. "I am going to be a lawyer," said young Baker. Edward D. Baker went over to the state of Illinois where he engaged in school-teaching, was for a time a Baptist preacher and afterwards "Thompsonian Doctor," finally read law and became a practitioner in that state. Col. Edward D. Baker had become one of the best stump speakers in the whole Western country. His voice was good, his delivery was very fluent and his elocution was pleasant and agreeable. He originally belonged to the Whig Party and was esteemed by them as one of their most eloquent and powerful stump-speakers. In the Harrison campaign of 1849 when party spirit ran high Col. Baker took a most active part in the political canvass. A short story about him was told as illustrating the political ambition of the young man. In the month of July of that year he was returning on horse-back from Springfield, Ill., to Jacksonville. The weather was oppressively hot and Col. Baker dismounted and took a seat on a log to rest and enjoy the cool shade. A gentleman in passing found Baker crying. Being acquainted with him he stopped and inquired the cause of his grief. The Colonel answered, "I have just been thinking over the matter and find that I can never be elected president of the United States because I am not a native born citizen. It is a great calamity and misfortune to me."

Recollections (Darby, J. S.) St. Louis. See 13 Am. St. Tr.

¹⁴ McDougall, JAMES ALEXANDER (1817-1867). Born and died Albany, N. Y. Began life as a civil engineer but removed to Illinois in 1837; studied law, was admitted to bar and in 1842 was elected attorney general for a term of four years. Removed to California in 1849 and one year later became attorney general of that state; and at the end of his term was elected to Congress; and in 1861 United States Senator. In April 1866 he made a noted speech in the Senate in opposition to the Bill to prohibit the sale of spiritous liquors in the National Capitol. See Hist. Bench and Bar of California (Shuck, O. T.), 1901.

Mr. Carpenter: I move that Charles Cora be arraigned on his indictment for murder, for the purpose of pleading thereto.

Col. Wood (clerk): Stand up, Mr. Cora. (The prisoner stood up and heard the indictment read.)

The District Attorney: Is your name Charles Cora? *The Prisoner:* Yes, sir.

Mr. McDougal: It is not the proper time to plead now, your Honor; it is not expected that he shall put in his plea now and we ask an extension of time until Wednesday, for pleading.

JUDGE HAGAR: I shall only give you until Monday to plead.

Mr. McDougal: I desire to state to the Court that the prisoner's counsel are anxious to have the time for pleading extended until Wednesday. There would not be sufficient time before Monday for a consultation among the prisoner's counsel. Colonel Baker is occupied in a criminal trial which will probably extend until Monday.

JUDGE HAGAR continued the case until Thursday.

Dec. 13.

The *Counsel for the prisoner* objected to the indictment and after argument THE COURT ordered it quashed and a new grand jury to be summoned.

Mr. James. I move that the prisoner be discharged from custody. The indictment has been annuled by the Court's decision and there is now nothing on which to hold him.

JUDGE HAGAR. The Court cannot listen to any argument on such a motion. The case is referred to another grand jury.

Dec. 15.

Another Grand Jury having been summoned and the members being in Court:

THE COURT. Charles Cora, stand up. Do you appear by counsel?

The Prisoner. No, sir.

THE COURT. This Court is now about proceeding to empanel a grand jury which will investigate the charges against you of murder committed on the person of William H. Richardson and the Court desires to know if you desire to appear by counsel in regard to the proceedings.

The Prisoner. I don't wish to appear at all.

Mr. McDougal. I suggest that this shall appear literally on the record.

THE COURT proceeded to empanel the grand jury, and addressed them as follows:

"The object and end of the grand jury is two-fold. First, to sustain the majesty of the law; and secondly, to protect the rights of the citizen. The maxim of the common law was, that no man should suffer the severe penalties of the law without the judgments of twenty-four of his peers—twelve grand jurors to find the bill, and twelve petty jurors to bring in the verdict. This right was wrung from an arbitrary monarch, and from unwilling judges, at a time when law was oppression and power was tyranny; it was a concession to human rights, demanded and insisted upon by the free spirit of the whole Anglo-Saxon race. You are supposed to consist of the wisest and most virtuous citizen; to have the largest stake in the interest of the government, and to be ready, by cool deliberation and earnest action, to meet any exigencies that may arise. The Court has confidence in you. You will not do more than your duty through intimidation of popular feeling; you will not do less through mistaken mercy or misguided sympathy."

Dec. 19.

Cora was again brought into Court. *Mr. James* presented a demurrer to the indictment which the COURT overruled. The indictment was then read to *Cora* who pleaded *not guilty*.

January 3, 1856.

The trial began today. The Court-room was crowded with spectators. *Cora* had not the easy air he assumed when last in court but appeared anxious and troubled. He was arrayed like a hero of melodrama. He wore a gorgeous waistcoat, light gloves, a new suit of pale material, a jaunty overcoat.

Mr. James moved for a change of venue and made five technical objections which were overruled by the COURT.

Jan. 9.

The selection of the Jury (which occupied five days) was completed today. The following Jurors were sworn: William A. Piper, A. B. Forbes, Charles H. Vail, John J. Haley, Edward P. Flint, Matthew Joyce, Jacob Mayer Thomas, C. D. Olmstead, William H. Stowell, John M. Easterly, Aaron Holmes, and J. W. Eton.¹⁵

¹⁵ Some of the jurors were good men. The foreman was a pioneer of '49 and a capitalist and large owner of real estate. He was a member of Congress in 1876. *Mr. Forbes* was the senior member of Forbes and Babcock, general Agents of the Pacific Mail Steamship Co. and of the Mutual Life Insurance Co. of New York. On January 8 *Mr. Mayer* made an affidavit charging one Sokolsky with having offered a bribe to acquit or force a disagreement of the jury.

Mr. Campbell in opening the case for the Prosecution mentioned briefly, the main facts and circumstances of the crime, which he left to be established by the witnesses. He charged the jury with the responsibility and defined to them *murder*, in the language of the statute. He concluded by referring to past crimes and trials, wherein there was no shadow of doubt, but the offender had gone unpunished. He referred to these facts, merely to illustrate the necessity of punishing crime when it was clearly proved, and did not intend that his remarks should apply particularly to the prisoner's case; and he would even caution the jury not to allow their minds to be swayed by such considerations in passing upon the prisoner's case.

Mr. McDougall in opening the case for the Prisoner, said that he asked for no mercy, but only for such rights as were guaranteed to him as a citizen. He said that Gen. Richardson and Cora were perfect strangers till the Friday night preceding the following Saturday, when the killing occurred. He challenged any statements to the contrary. He desired to explain that Richardson was a man of powerful strength, although small in stature; that in physical comparison the prisoner was much the slighter man. That the deceased was quick in quarrel—easily provoked, and prompt in taking action. The prisoner, on the contrary, although born under an Italian sun, was a man of peaceful habits; and no matter how disreputable his profession (gambler), he was a man that had no taste for blood.

On the Friday night referred to, Gen. Richardson in company with some friends, entered the Cosmopolitan saloon, a little past midnight; and Cora at the time was in the back part of the saloon, playing back-gammon with doctor Mills. Richardson and his friends were, already, somewhat affected by drink, and were about taking a glass of champagne, when Dr. Mills came forward and introduced Cora, who was then invited by Gen. Richardson to take a drink. Richardson was excited by liquor, and shortly after walked out onto the sidewalk, accompanied by Cora. Some trifling reference on the part of Cora was displeasing to Richardson, who said: "what

is that you say?" "I will slap your face for it." They returned into the Saloon, but friends prevented any difficulty that night. The next day about 4 o'clock Gen. Richardson visited the Cosmopolitan, and inquired for the young man whom he had the difficulty with the previous night. He then started off in search of Cora, and finally found him on Clay street, in company with Mr. Ragsdale. As he passed, Cora remarked, "there goes Gen. Richardson with whom I had a difficulty last night, and he gave me a black look as he passed." Mr. Ragsdale remarked that he knew Gen. Richardson very well, and that he would make up the quarrel. They then walked down the street and found Richardson, and after some controversy, it appeared that the matter was amicably settled. They then proceeded to Mr. Hayes' saloon and drank together, and afterward went together to the Cosmopolitan, and drank again. Gen. Richardson did not appear satisfied. Shortly after, he tapped Cora on the shoulder and urged him to go with him to the corner of Clay street. Cora was anxious to separate, and said that he wanted to go to dinner. Gen. Richardson replied, "I have lost my dinner by this damned thing." Cora became alarmed and asked Gen. Richardson whether it was all settled? Gen. Richardson had Cora by the left arm, walking along the south side of Clay street. Gen. Richardson had on his person a heavy knife, and a deringer pistol. And as they passed along, the sound of something metallic (which was, in fact, the sheath of the knife) was heard falling on the street. The next thing that was observed was Gen. Richardson holding the knife in his up-lifted hand—a struggle ensued for the knife—Cora having seized Gen. Richardson by the arm. On finding that his arm was pinned, Gen. Richardson drew his pistol with his other hand, and a scuffle ensued for that, which Cora succeeded in getting from Richardson. Cora then drew his pistol and shot Richardson.

Gen. Richardson had been hunting Cora all day; in his conversation with Cora he had constantly kept hand on his pistol; a knife and pistol belonging to Richardson had been picked up near where he fell, identified by evidence. He

would, therefore, on such evidence, demand a verdict of acquittal.

THE EVIDENCE FOR THE PROSECUTION.

Police Officers Smith and Murphy testified that Cora had not gone far when he was arrested and taken to the Station house. Richardson was taken to Keith's drug store, Montgomery and Clay streets, where he almost immediately expired. Meantime an immense and excited crowd had gathered in the vicinity, completely blocking the streets for two squares. Cries of "Hang him! hang him!" were heard on every side. Several addressed the assemblage, urging his immediate execution and putting it to a vote. Cora manifested the utmost coolness, but when he was transferred from the station-house to the jail he grew anxious and glanced nervously behind. During the evening the excitement continued. The bells of the several engine houses were rung; it was rumored that the Vigilance Committee were in session; that rope and beam were ready and that an attack on the jail would soon be made. The sheriff being absent at the time we secretly sent him to the suburbs. The sheriff returning shortly ordered him brought back to the jail over which he placed a strong guard. At the Oriental Hotel, Samuel Brannan addressed the people, urging his execution. He was arrested by the sheriff for disorderly conduct and inciting a riot. A large crowd followed him to the station house, threatening once or twice to rescue him. He was immediately re-

leased on his own recognizance. Toward morning the excitement died away and the people dispersed. Cora was examined by the authorities and held for trial.

General Richardson's body was taken to his office in the Merchant's Exchange where it was exposed to view all night; large numbers of people viewed it.

Doctors Sawyer and Rowell testified that they made a post mortem examination of the body. The ball entered the body 2½ inches above the left nipple; it perforated the fourth rib, near its junction with the cartilage of the rib, and passed through the thin margin of the left lung, the left cuticle of the heart, the middle lobe of the right lung; and was found under the integument over the eighth rib, toward the interior part of the body.

Charles Robinson. On Saturday evening of the shooting, passing out of Leidesdorff street into Clay and going toward Montgomery, I saw two men standing in the doorway of Messrs. Godefrey & Sillem's brick building. One of the men had a pistol in his right hand, the muzzle pointed at the breast of the other, while with his left hand he had grasped the collar of his coat. Heard the man who was held by the collar say, "You would not shoot me, would you? I am not armed." Supposing matters serious and seeing a man on the opposite side of the street whom I supposed to be a policeman, I rushed across the

street and said, "separate these men or there will be trouble." Found I was mistaken, the person I addressed was not a policeman; ran up to the corner of Clay and Montgomery streets and seeing no officer there, turned back determined to separate the parties myself. As I was going towards them a pistol was discharged and Richardson fell dead. This was at 7 p. m. From the time that I first saw the men until the shooting must have been nearly three minutes.

The person mistaken by me for an officer I afterwards found was Captain Cotting. He afterwards came up and told me he had seen the shooting. We followed Cora until he was arrested.

Captain Cotting. Was on Clay street Saturday night. Mr. Robinson ran across the street and said, "Officer, there is a fight over there, you had better arrest them or there will be trouble." I said, "I am not a policeman." Just then I noticed two men, one pushing the other into Godeffrey & Sillem's doorway; also observed that one was holding the other by the collar and had a pistol at his breast. The man who was held made no resistance; on the contrary his hands were hanging down at his side. After firing the pistol the other released his hold upon the collar and walked up Clay street. We followed and he was shortly after arrested and placed in the custody of the City Marshal.

James Wayne. On Saturday evening about half past six on my way home I saw Cora and Richardson come out of the Blue Wing Saloon on Montgomery street near Clay. They were talking earnestly and stopped in

the square of light from a window. Richardson was explaining and Cora was listening, sullenly. As I passed them I heard the Marshal say, "Well, is it all right?" and Cora replied, "Yes." Something caused me to look back after I had gone a dozen yards. Saw Cora suddenly seize Richardson's collar with his left hand at the same time drawing a derringer with his right. "What are you going to do?" cried Richardson loudly and steadily without struggling. "Don't shoot, I am unarmed." Without reply Cora fired into his breast. The Marshal wilted but Cora continued for several minutes to hold him up by the collar. Then he let the body drop and moved away at a fast walk, the derringer still in his right hand.

William Bates. On the evening of 17th November I met General Richardson as he was coming out of the Cosmopolitan saloon. He was quite intoxicated; am sure of this as we knew each other well and though I spoke to him he did not know me. Cora was with him; they were walking side by side. I did not notice which way they went.

James Blanchard. Was in the Cosmopolitan Saloon Saturday evening; the Marshal and Cora were there drinking with another man; the two left and I followed them for half a block, then turned the corner and did not see them again; when I was close behind them heard the General say to Cora, "Is all settled then?" Cora replied, "no it isn't. If a man abused one like you do how can it be settled? What do you expect me to do"? The General walked as

though he was partly drunk; Cora seemed quite sober but very angry and excited.

General Addison. The morning after the difficulty between Cora and the Marshal I met the latter on the street near his office; had not heard about it then; he said he had had a row with a gambler in a saloon the night before; that it was troubling him very much; he was very sorry the thing had taken place but he had lost his head with too much wine: he had lost his temper too and felt deeply humiliated: he had lost his self respect too, he said, for nothing could excuse such a controversy in a public place by a United States officer with a character like him, a tout and gambler.

John Nugent, editor of the San Francisco Herald and several leading citizens testified that General Richardson was a man of high character and respectability, had the full confidence of the community. They had never heard of his gambling or indulging in any profligacy though his failing was strong drink. But he was never quarrelsome when intoxicated and was always peaceable, kind and generous; he was a man that would never take advantage of anybody.

Maria Knight. About six o'clock on the evening of the 17th inst., I was turning the corner of Clay and Leidesdorff streets; saw two gentlemen standing on the door step of the building on the upper corner; one of them had one of his feet

on the side walk, the other on the sill of the door step; saw them in conversation together; saw one of them put a pistol to the other's breast, and fire it, after which he walked away; the one that fired had a hold of the other by the left shoulder; know neither of the parties.

E. P. Cotting. I am a stevedore; about six was going down Clay street, between Montgomery and Leidesdorff, and saw deceased and Cora walking arm in arm until they came to Fox & O'Connor's; the man that was arrested caught hold of deceased, and forced him into the door; deceased remarked to him when he done so, if he intended to shoot him; the man that was arrested said he did not, he only wanted to talk with him; saw him take hold of the deceased and back him up against the iron door, and fire at him; heard deceased say to him that he was unarmed; at the time he told deceased he was going to talk with him; after he fired at deceased he held him for about one minute, then let him go, and walked away until he got the length of Montgomery street, when he was arrested; deceased, after he was let go, fell; he caught hold of deceased by both arms and forced him back against the door; I saw him have a pistol in his right hand; at the time he was pushing deceased saw no weapon in the hands of deceased; his hands were by his side.

C. L. Johnson corroborated the testimony of *Mr. Cotting*.

THE EVIDENCE FOR THE DEFENSE.

Pete Marsh. Am a barkeeper at the Cosmopolitan Saloon; Friday night before the shooting, General Richardson came in with some friends of his; it was late, after twelve I think: Cora was in the back room playing backgammon with Dock. Mills: The party drank Champagne; Mills came up with Cora and introduced him; Richardson did not shake hands with him as the others did but came over and said, "I want a word with you out side," and they walked to the door; I went near and saw them standing on the sidewalk; heard the General say, "What do you mean? I will slap your face." They came in again. The General was very angry but his friends quieted him. On Saturday he came to the saloon about 4 o'clock and asked me if I had seen today the young man he had the trouble with last night; if I knew where he was; I told him I did not as I feared a fight if they met. I left the saloon for my supper about an hour after and got to the spot just as they were fighting in the doorway; saw a pistol in the General's hand which was raised; afterwards found it on the sidewalk; it was loaded. My profession is barkeeper but I sometimes deal faro.

Arthur Mills. About midnight was playing a game in the Cosmopolitan saloon with the prisoner. The General and two or three others came in to the bar and drank together. Our game being finished Cora and I went up and I introduced my friend to them. The General glanced at him in an angry way but did

not shake hands; in a little while he went up to Cora and they stepped outside; did not hear what was said; Cora came in and called out, "have I any friends here?" I said, "yes what's the matter?" He said, "that man says he is going to slap my face if he ever sees me again." In a moment the General came in and said, "where is that fellow? Where are my friends?" but Mr. Turner and Mr. McKibben who had come in with him had gone. He seemed pretty drunk. Cora appeared to be sober; he said to me, "I promised to slap that man's face and I had better do it now." Some one said, "Oh, you must not do it." I tried to quiet him and succeeded after a while; was going to introduce them again but it was not done, I don't know why; they left by different doors, don't know why for they seemed friendly again.

John Papy. Was in the saloon with the crowd the night before the killing; was not in the General's party and did not hear what was said; saw Cora and him go out but left before they came back. Heard the next morning of the trouble; knew the General, met him on the street that afternoon about four; he was slightly drunk, talked to him about the thing and he promised me to go home at once.

William Ragsdale. About an hour before the shooting, was on Montgomery St. talking with Cora when General Richardson passed by. Cora turned to me and said, "There is the man I had the difficulty with; he gave me a black look just now as he

went by; I want to see him to settle this thing." Told him I knew the General and would help him; would go now and speak to him. I caught up with him and asked him what was the trouble, he said, "that man with you, I owe him a slap in the face and have told him so". I said, "if you were to say that to me I would tell you to do it if you dared." This seemed to change him a little and when I suggested that they should make it up he said, "Well, I'll talk to him". So we walked back and joined Cora. They stepped away from me and they talked for some time. They seemed to agree to something for Cora called out for me to come with them and we walked up to Hayes' saloon and then to the Cosmopolitan where we took several drinks together. Cora seemed satisfied but the General didn't. He tapped Cora on the shoulder and said, "let's go to the corner;" Cora said, "It's late, I want to go to my dinner". The General replied very angrily, "I have lost my dinner by this damned thing." This seemed to frighten Cora for he asked the General, "It's all settled now isn't it, General?" They left together and I followed behind pretty close. Saw that the General had a heavy pistol in his pocket, also a big knife which afterwards, I mean the knife, fell on the pavement when they were fighting for I heard it falling, heard the rattle on the walk. Saw them begin to fight opposite Goddefroy's building. Saw Richardson raise his hand up with the knife in it. Cora tried to get it and made the other drop it and reach for his pistol with his other hand, in the struggle.

Cora got hold of it and it fell to the pavement and just then Cora fired. I swear I saw all this. Did not notice anybody else watching them while I did; did not join the crowd that followed Cora, went right back to the saloon after I heard the shot. It was time for me to go on duty at the saloon; I thought there were enough other people around and my assistance was not needed. I tend bar. Have worked in the mines; have also worked in a faro saloon; work at election times too; have worked for Mr. Casey at such times; have never been convicted of any crime; have been arrested more than once.

Mrs. May Knight. Saw the two men fighting and saw the shooting Saturday night; just before saw the big one, the one that was killed, raise his arm as though to strike the little one; he held something in his hand; it might have been a pistol, perhaps it was a knife. Do not know what brought me to that place at that time. I just happened to be passing, don't remember where I had come from but was on my way home. Do not remember seeing any of the witnesses that have been examined and who say were there; of course I got into the crowd that followed Cora for I wanted to see as much as I could. Nobody recognized me or spoke to me in the crowd; cannot name anyone that I saw there. Yes I have been in jail several times, never for stealing, generally for being a sporting woman as they are called. Did not know General Richardson; don't think I had ever seen him, had often seen Cora.

Patrick Glennon. Saw the shooting of General Richardson,

came up while they were fighting, saw the General raise his arm as though to strike Cora with something. He had a knife in his hand. Cora shot soon after. Did not see the persons pointed out to me now (Mr. Robinson, Captain Cotting or Mr. Wayne); don't remember seeing Glennon there before the shooting, but saw him after in the crowd. Was on my way home to supper when I saw the thing; was alone. Am a horse man; go to the races a good deal, often make bets. Am a little in politics and have been a deputy sheriff; lost that office on charges made against me which are false; have been arrested but have never been in jail; know Belle Cora very well, also the prisoner; I forgot to say that I saw Gen. Richardson draw a pistol before Cora fired.

Benjamin Thomas. I was walking down the street on that Saturday evening when I saw Cora whom I knew, walking in front of me with a bigger man; they were close together, seemed arm in arm. Suddenly I saw them in a scuffle, saw the big man raise his arm with a knife in it; Cora grabbed the arm and then the big man reached out the other with a revolver which Cora grabbed; then he pulled his pistol and fired and at once ran up the street. Several persons followed him, do not remember who and could not recognize them now. Do not remember these gentlemen who have testified as being there. I ran after the prisoner intending to help him, as I knew him well. As soon as Cora was arrested I went over to Belle's house and told her. I

knew her and her house very well. Used to be a grocer but failed in business; don't think my creditors got much, don't remember; I peddle nuts and fruit and such things now; have lived with a woman not my wife; have been arrested for frequenting sporting houses. The charge was true.

James Turner. In a saloon one night more than a year ago had trouble with General Richardson; he was drunk at the time and called me ugly names; he drew a knife when I remonstrated. I was badly scared and thought it better to apologize for something I had not said than to run the risk of being stabbed. He had the reputation then and had when he was killed of being very quarrelsome and vindictive when he was half drunk.

Am a saloon keeper, own my own place. The General often visited it after that occurrence.

Dr. McMillan. Know both of the parties. Gen. Richardson's reputation I know from what I have heard from many. It is that of a very excitable and dangerous man when he drinks; even when he is sober he will flare up if you contradict him. I know of other quarrels he has had when he was drunk; he is known too at the leading houses of ill fame and has the reputation of being a heavy bettor in the Gambling houses. Cora has the reputation of being a quiet young man and though not a very moral man as things go among the best citizens, as a peaceable man; I never heard of his being in a fight like this before.

IN REBUTTAL.

The District Attorney called two detectives who proved that two of the prisoners had been elsewhere at the time of the killing and two other witnesses who

swore that Richardson's hands had been empty and hanging at his sides.

The defense did not cross-examine these witnesses.

THE SPEECHES TO THE JURY.

January 14.

Mr. Byrne said that the verdict must be either one of conviction or honorable acquittal. Some of the witnesses for the defense are plain liars, conspirators against the administration of justice. He left it to the common sense of the jurors to find from the reputation and habits of these men whether they were worthy of credit and belief and whether they had not been brought here for the very purpose of clearing Cora. A prominent and respectable citizen has been ruthlessly murdered in the public streets. He lies in a bloody grave leaving behind him a heart-broken widow and young children unconscious of the nature of their loss. And this has been perpetrated by a man whose character is infamous and whose profession is that of a gambler. The prisoner has secured eminent and able counsel to defend him and all that ingenuity and learning can suggest has been brought to protect him from the vengeance of the law. Bribery of both members of the Jury or at least attempts to do so has been proved and the same thing is true as to witnesses. To find a verdict for the prisoner you will have to ignore entirely the testimony of the witnesses for the prosecution. They can have no reason for speaking otherwise than truly, while those for the defense are either influenced by friendship for Cora or what is worse, are perjurers for personal gain. Consider the habits and life of the witnesses: on the one side we have men unimpeached whose characters are unassailed—on the other by their acknowledgment, gamblers and touts for cockpits.

We live in an age in California resembling the days of the breaking up of the Roman Empire. Corruption sits in almost every quarter, even in high places. A man's life is of less

value than that of a horse; there is no security, for human life is trifled with. Our character as a country has become stained by the aspersion. And here is another victim. Mercy murders in pardoning him that kills. Let this man go and you create a pandemonium in San Francisco.

Mr. McDougall. Gentlemen of the Jury: It has been remarked by Mr. Byrne, that it had been found necessary by the defense in this case, to occupy some three days to select a jury. It is true, gentlemen, that such is the fact; but the reason of such caution on our part, has not been so much to obtain a jury favorable only to the prisoner, but, also, to obtain such a jury as would, from their high social position, be satisfactory to the community; and whose verdict might be regarded with satisfaction by the people at large.

I shall now call your attention to some of the occurrences of the night of the 16th of November, and show to you that the same bloodthirstiness which the deceased then exhibited was renewed on the day of his death. If you will recollect, gentlemen, Mr. Papy testified that he left deceased at 4 o'clock on the day of his death, with the understanding that Richardson was to go immediately home. Did he do that, gentlemen? Instead of doing that, he proceeded directly to the Cosmopolitan Saloon, and inquired of Marsh, the bar-keeper, "If the man with whom he had the difficulty last night had been there to-day?" This shows that Richardson had not forgotten his threat to kill Cora, and that he hunted him to put that threat into execution; that he was under the same morbid and bloodthirsty influence as the evening before.

When under the influence of wine General Richardson was a dangerous man—prompt to suspect and resent an insult. Though he said he regretted the difficulty and was ashamed of it, yet the next day in a state of debauch he renewed it and lost his life as a result.

Richardson was killed by Cora to preserve his own life. Suppose Cora had been killed would not the community have said General Richardson is a man of bravery, of standing and acted from motives of self preservation? He would have been discharged at once by the first examining magistrate, and his

action would have been lauded, approved and recognized by everybody. So, Gentlemen, would have ended the case had Richardson been on trial instead of Cora and his fame as a brave man, a gallant man and an honorable man would be augmented and increased.

The Prosecution has attempted to impeach two of our witnesses—Thomas and Glennon; they have laughed at, they have sneered at, their stories and yet they stand unimpeached.

I ask you this one thing, to disregard the insane clamor of an excited populace. We are compelled to fight a foregone conclusion on the part of the community. They have judged the prisoner already and the public opinion is pressing on us from all sides. If this prisoner is convicted, I say it solemnly, it will be judicial murder.

Mr. Baker. Gentlemen of the Jury: I sincerely trust that a night of serene repose after the exhausting labors that you have undergone has enabled you to return here today with dispositions equal to those which you have shown during the whole course of this investigation; and while I feel that upon the defense which I am about to end, will in some sense, depend the eternal welfare of a human being, I feel myself honored and happy in being allowed in such a case and for such a purpose to address a jury who have proved, not to the counsel alone, not to the audience alone, but to the prisoner himself, a determination to render strict and impartial justice; and I am instructed to say for him, what he could not have said when the trial began, that whatever may be the end of this day, he has a profound and abiding conviction of your truth and justice. He cannot but feel that to you is delegated a little less than supreme power—that none but the Almighty can control the consequences of your judgment; and with this painful thought pressing upon his mind and heart I am here to say for him that he is willing to trust in your hands the issues of life and death. And gentlemen, while I advance to the discussion of this case I cannot forget the imposing aspect that is thrown around the prisoner on this occasion. The whole majesty of the law of a great and civilized country—all that care in the selection of a jury and

labor in the arrangement of testimony and zeal on the part of the prosecution and care on the part of the defense could do, has been done. And while it is true, while it is very true, that the man who is before you on trial for his life is a man of base character and in some respects vicious—whose position in life is low—whose condition at this bar is that of loneliness and dependence upon one human being for sympathy and kindness—with all that, he is here guarded by the care of the judge; hedged around by the justice of the jury; protected by all the sanctions of the law; and poor and humble and degraded though he be, he is fenced about and cared for “with all the divinity that doth hedge a king.”

It is a painful and impressive spectacle. Nor are we to forget that it is the province of the law to render justice to the memory of one who is no longer among us. It would be idle for us to disguise that the appeal by Mr. Byrne (though he disclaims it)—his allusion to the bloody grave and the verdant sod and the tearful widow and the unconscious orphan—must weigh and will weigh upon your minds. We are but men; we are not deprived by being selected for a seat in this place, of the passions and sympathies of human nature; and I am far, very far, from complaining of anything that has been said, or may be said, upon that subject. I am not inclined at all to disguise it. It is not they alone who feel an interest in the case; something more than a concern for professional reputation presses them to extremes. It may be that at the very moment when I speak some tearful woman may be upon her knees in the depths of her closet imploring the Almighty to open your hearts, to do justice to the memory of the husband she has lost. I don't complain of these things; I don't shrink from their being mentioned; I feel them; my heart quivers when I think of them. I do not wish that in any portion of this trial you should forget them.

But there is another aspect of this case to be thought of. The man who is here struggling for his life—who is arraigned for the death of one claimed to be one of the purest of our citizens, is said to have followed degraded and vicious pursuits. It is said of him that he is cared for by a woman

of very bad relations in life, whose name indeed is a reproach. Against this man at the bar the whole public press—that mighty engine of passion and power—have poured out all the concentrated vials of their wrath and indignation. Every portion of his career has been maligned; every motive of his heart has been perverted; every act of his life has been misrepresented; and imagination if not upon its highest and purest, upon its boldest wing, has applied to him every epithet of reproach and related every narrative of shame. Against this we have but one defense—against this we have but one resource, but one hope. It is to be found in time, which tempers all things—it is to be found in human sympathy and the justice of this tribunal—in the merciful consideration of human infirmity—and at last in stern, naked and irresistible truth. And if the lips about to speak to you are feeble and if the thoughts about to be uttered are trembling and uncertain—if pure efforts shall be marred by the ingenuity, skill and eloquence of the gentleman who is to follow—it is but for us to rely solely upon inflexible truth; and it may be for him (pointing to the prisoner) with heart and lips all unused to prayer, to lift his thoughts to the Great Father of life, who made him as well as his Honor on the bench and the jury in the box, to guide, impress, stimulate and enlighten his advocate to press his claims to liberty, life and hope.

The prosecution of this case charge that the defendant on the night of the 17th of November, 1855, maliciously and without just cause took the life of General Wm. H. Richardson, Marshal of the United States for the Northern District of California; and that he is attempting to sustain himself by a conspiracy against truth, honesty and honor; and the inferences of his character are, by comparison, more fatal to his hopes because they say his victim was a man of elevated character and mind. This is the beginning of this case—this is the end of this case—the comparison is pressed on us at every step we take. It is idle for us to deny that the shield of character which we attempt to hold up before this defendant is in many parts frail and broken. He yielded in his

youth to temptations which, like thronging devils, have pursued him all his life, and he feels today more bitterly than words of mine can express, the want of a shield spotless and pure in this moment of his great trial. Whether he be a man of unmixed evil is for you to determine; whether there be not something of native good in a man, who, amid a life of such vice and vississitude, has congregated around him the good wishes of many friends—early friends—friends of a better day—it is for you to, yes, to judge. No such temptations crowd upon you. The men with whom you mingle are not flushed with passion or steeped in crime. With you, and with all of us, it is peace and calm and quiet and content. With him it is far, very far, different; and I say being so, and so most undoubtedly, amid this career he has been able to preserve the balance of his mind and the control of his temper in regard to public law and in regard to private right. His quiet career is so much at least to be remembered in his favor. I plead it for him; I lay it before you; I ask you to consider it. Let it be the wand that will bring up from the depths of your hearts a bright, gushing stream from the fountains of mercy. But while we say this much as to this man, we are not willing that the comparison should be made worse than it is. We are not willing that this man, while in some respects so vicious and in other respects so amiable, should be arrayed by way of comparison, against the life, conduct and character of another man, dead though he be, with every virtue exaggerated and every good quality increased. We are compelled to say that the argument made against our client by comparison with General Richardson is false in fact and false in deduction. We make the issue, they force it upon us. I would be recreant to our duty in pleading for this man's life if I feared to meet this issue and I do not. We attempted in the beginning of this controversy to show—

1. That Cora, whatever his other habits may have been, was a man of peaceful life and conduct;
2. That whatever the character of Richardson may have been in other respects, he was a turbulent, dangerous man.

This we announced. What have they done? They have forced upon us a broader issue and a more extended debate. They say, we will show, that not only was Richardson kind, quiet, orderly, peaceful, but that he was a man of generous impulses, of magnanimous conduct, of high tendencies, of gallantry, of bravery, of chivalry—incapable of assailing a man without preparation—incapable of deceit in action—incapable of falsehood in statement or of aught unworthy of the high-sounding names attached to him. They got Mr. Nugent. He says that General Richardson was not only peaceable and kind but chivalric, gallant, fair, honorable, incapable of taking advantage.

Well, now, it was impossible for us after that notice and after we heard that line of proof, not to turn our attention to the facts and inquire whether this be so or not; and when we made up our minds to accept the challenge and to enter into that controversy we did it, well knowing all the uses that could be made of it in declamation, if we made the attempt. I would be insensible to the many merits of Col. Inge and Mr. Byrne if I did not know how well they will declaim about the raking up of the ashes of the dead. They will say that Richardson is now lying in his bloody grave and that not content with that we are arraying against his memory all the forgotten stories that can be recalled of his past career.

Is that true? Did we do it? Could we avoid what we have done? When I stand up there and find my client overwhelmed with a mountain of infamy and plunged into the depths of degradation by comparison with the man who is now lying in a bloody, though quiet grave, shall I suffer it to pass? Never. They may declaim till the heavens fall—they may accuse us of want of feeling—of mercy, of anything else. I care not. I appeal to the facts. Whatever the prisoner is, he was peaceful, amiable, kind. Good though the other man was as a husband and a father, he was violent, dangerous and in his anger, deadly. As for being magnanimous and honorable he was not so; but what he was from the first day that we hear of him he remained to the last—

full of faults, though not without redeeming qualities. We must prove it by his general reputation. What was that reputation here? Why did Mr. Turner tell us that when he came in contact with him, had it not been for his coolness he would have lost his life? What was his reputation the night Cora killed him? What did Turner think of him? What is reputation? Why are we not allowed to make an investigation as to specific facts? Why is it that with the reputation of a peaceable man he is always in trouble? Have *you* been in trouble? Are *you* assaulted? Are *you* seen belted behind a knife and pistol day and night in season and out of season? Are *you* reputed to be sudden and quick in quarrel? Are your past lives checkered with adventure after adventure which your best friends dare not repeat? Is that peace? Are you seen at the very depths of midnight in more than doubtful company and reckless, drunken, desperate, meditating assassination, regardless whether your victim be friend or foe? When they crowd upon Cora and upon Glen-non and upon Thomas and upon Whitnel and charge infamy and perjury, is not that, to use the language of Mr. Byrne, "piling Pelion upon Ossa or Ossa upon Pelion?" Shall we make no report? What could Cora expect from Richardson? Could he say with the pistol to his breast "This man is too magnanimous to shoot me—he is too honorable to assail me—he has lived a life of purity and peace too long to vary from his usual course." Gentlemen, there is no character to throw into the scales against us. Richardson bore no flaming sword of reputation to weigh against our cause and make it touch the beam.

It was not our intention, gentlemen, to attack the character of Gen. Richardson; but it was forced upon us, and in self-defense we were compelled to attack his reputation, to sustain that of the prisoner; and what were their relative merits? Doctor McMillan has testified the infamy of deceased, and has proved his habits and profession to be identical with Cora's. Bad as Cora has been, abandoned as his heart has proved; wicked as has been his course; he yet can find, in adversity and peril, friends ready and willing to testify to his kindness

of heart, his peacefulness of temper, and his devoted friendship. These qualities at all times command our admiration and esteem; but when we find them linked with a life of vice, when we find them the attributes of the gambler, and qualities of an otherwise abandoned heart, how forcibly do they remind us that he yet possessed in some degree, the elements of truth, magnanimity, and of an elevated mind. While, therefore, we admit that Cora is bad, we hold it ungenerous to compare him odiously with Richardson. The character of the latter has been proved not only to be bad, but also to be dangerous and desperate in its every nature. What, gentlemen, was Mr. Turner's testimony on this point? He tells you that on one occasion he was told by his friends that if it had not been for his coolness, he would twice have lost his life.

The other side complain that we have three counsel, and defended by able and ingenious advocates; and they say "Cora is well able to pay for their services. If he had been poor they would not have been here." Mr. Byrne ought to think better of his profession. Mr. Byrne ought to be governed by better impulses or rather he ought to refrain from doing injustice to his opponents.

Did it ever occur to the gentlemen, who bitterly complain of this fact, that the prosecution was sustained by more than three counsel; and that these counsel are equally as learned, as able, and ingenious as Cora's? Oh! gentlemen, how uncharitable is the world, and how truly has it been said, that we are apt to discover the faults of others, while we are blind to our own.

The legal profession is above all others fearless of public opinion, candid and sympathetic. It has ever stood up against the tyranny of monarchs on the one hand and the tyranny of public opinion on the other. And if, as the humblest among them, it becomes me to instance myself, I may say it with a bold heart—and I do say it with a bold heart—that there is not in all this world a wretch so humble, so guilty, so despairing, so torn with avenging furies, so pursued by the vengeance of the law, so hunted to cities of refuge, so fearful of life, so afraid of death—there is no wretch so deeply

steeped in all the agonies of vice and misery and crime—that I would not have a heart to listen to his cry and find a tongue to speak in his defense, though around his head all the fury of public opinion should gather and rage and roar and roll as the ocean rolls around the rock. And if I ever forget, if I ever deny that highest duty of my profession, may God palsy this arm and hush this voice forever.

Let us look to testimony as given by the witnesses, and draw such conclusions from it as accord with common reason. In the first place, it is said that Cora assassinated Richardson. In reply, we say, Richardson attempted to assassinate Cora. We say that on the evening of his death the deceased was inflamed with liquor; that while under its influence, instead of going home, as he promised Mr. Papy, he went to the Cosmopolitan, and inquired of the barkeeper if “that young man, whom he had the difficulty with, has been here to-day?” Does this look like assassination by Cora; and actuated by the fiend which had caused him to disgrace himself before, was laying his plans to assassinate Cora? Is it not reasonable? Is it not true? It is said he was brave, chivalrous and magnanimous. Is carrying weapons habitually, brave? Is seeking an adversary chivalrous? Is assassinating him magnanimous? I appeal to you, gentlemen, if the propositions of counsel are not absurd, ridiculous and foolish? I tell you, gentlemen, that carrying weapons is not brave, and that nine men out of every ten who do so, and are killed in difficulties, deserve the fate, and receive their just reward. California juries, says Mr. Byrne, have won the name of accessories of felons; that the temples of justice have been little less than channels of escape for the criminal of every dye and of every stamp. Now, why does he say so? It is because enlightenment has dwelled within their precinct, and honesty within their halls. It is because humanity and mercy abide there, and because cruelty and prejudice are banished from their portals. These are the reasons why this remark is made, and to them I have made a just reply. The prosecution do not deny that Richardson attempted to kill Cora, or that he went to the Cosmopolitan and asked for him. What did he do

that for? What earthly purpose could have prompted such a question, except a desire for vengeance; except bitter malignity and his determined purpose to assault Cora. It is for you, gentlemen, to consider this fact, and to reconcile it, if you can, with the guilt of the prisoner. Mr. Ragsdale has told you, that while standing on Montgomery street with Cora, shortly before the killing, Gen. Richardson appeared, and that Cora remarked: "There is the man with whom I had the difficulty, and as I passed him he gave me a black look; I want to see him to settle it;" that it was settled, and that Cora and Richardson walked towards Clay street, arm in arm. It is a little singular, gentlemen, that Cora, who was anxious to settle, and who had submitted to indignant treatment without a manly effort to dispute it, should assume the manner of a bravado, and manifest towards Richardson the spirit of a lion, within a few feet of the scene of reconciliation. How can this be reconciled with the character of the men? Who believes it? And yet Blanchard has sworn so; has told you that in answer to a question as to "whether it was settled," Cora answered, if a man says so and so, what is he to expect. Is such a statement compatible with reason? Could it have happened, and is it not impossible?

Let us glance at the evidence of Mrs. Knight and Captain Cotting; the first one tells you that Richardson had his hands up, pushing Cora away; while the other testifies that Richardson's hands were firmly pinioned by Cora. Is this consistent? What did he have his hands up for, was he not struggling, and who began it? We say he was, and that Richardson was the aggressor. Again, one witness says the two men were staggering into the door, while Cotting says he was forced in. How are you to reconcile these statements? The truth is, there was a struggle, a combat and a fight. Richardson was endeavoring to kill Cora, and Cora was trying to prevent it. Mrs. Knight swears that Richardson had one arm raised. Two others for the prosecution also say he had not. Remember that the raising of his arm is life or death to us. If Cora killed him with his hands

down it is murder; if there was a struggle it was different. I believe Richardson was brave. I don't believe that the man lives who, twice in one day, could back Richardson up against a door and put a pistol to his bosom and hold it there, while he, Richardson, cowered like a slave. Is there no moral law to be observed? Is there no correspondence in the nature of things? Did Richardson, as Mrs. Knight says, raise his arms? Did he, as Cotting says, have his arms pinioned? Now before you go one step farther towards a conclusion you must be satisfied on that point and you must all agree upon it. Again a pistol cocked was found near his hand. Now I want to utter a word upon which eternal things may depend. I ask you was that pistol drawn before Richardson was shot? Can you believe he stood up in that doorway for four minutes with a pistol cocked and say he was unarmed? Mr. Cook may have been mistaken but whether he was or not, the pistol was there, the knife was there. They were drawn; he drew them; they were drawn in combat; and being drawn it justified the utmost extremity of arms, before men or angels. It has also been said that Cora held Richardson up, after he shot him, to rob him of his weapons. What evidence is there of this? The proposition is mere sophistry; it is absurd and a mere supposition, unsustained by facts, and unfounded in truth.

And now we come to the testimony of Thomas and Glennon. Thomas told the truth in substance, and what objections have been made to its truth? 1st, he is a nut pedler; 2d, he has failed in business; 3d, he is not of good character, and lastly, he contradicts himself. In the first place, he is a fruit vender; that is unworthy of Mr. Byrne; he has failed in business, so have a hundred others; 3d, his character is bad. He has been an Alderman of Buffalo, and a respected and honorable man; and 4th, he contradicts himself, in having told a different story at different times, and to different individuals. Is it true? And what do they say of Glennon? Why, he too is perjured, say the prosecution, and bought for the purposes of this case. Did he not too, like Thomas, tell the same story on the night of the killing

as upon this stand, and have we not proved it? He told, when questioned, that he went to Belle Cora's. If he was lying about one part, why could he not about all? Why didn't he deny ever having been there? These, gentlemen, are questions to be satisfactorily answered before you reject their statements.

In relation to the impeachment of the witness Thomas, it is no argument that he did not tell the truth because he sells fruit or because he failed in business or because his character in relation to women is bad. I might enter into an elaborate argument to show that because he sells fruit he is all the more liable to tell the truth because he deals in the fruits of nature. I would be very sorry to say that he told a lie because he failed in business, because then all the good men who have failed here and who will fail would be considered unworthy of credence. And as to his character in relation to women I have only to say that charity is one thing and veracity another. The theory of the prosecution is that we bribed Thomas and Glennon and Marsh and Ragsdale. It would be strange if in all this bribery we could not get one man who saw some identical fact fatal to the prosecution. Why did we not get some one to put into the mouth of Richardson such words as "Damn you, I'll shoot you anyhow." I cannot see that there would be any more perfect clincher to the case. I ask you if our side intended to corrupt or bribe, why could not we get some man to prove that? According to their account could not Glennon swear to anything? The case rests on the probability of statement as to the facts and there is something in the human heart native to truth which will give credence to the story of our witnesses unless there be some specific affirmation to the contrary.

I will now proceed to grapple with the great bugbear of the case. The complaint on their side is that Belle Cora has tampered with the witnesses. Mr. Byrne has chosen to declare that the line of defense was concocted in a place which he has been pleased to designate as a haunt of sensuality. In plain English Belle Cora is helping her friend as much as she can. It may appear strange to him, but I am

inclined to admit the plain, naked fact, and in the Lord's name who else should help him? Who else is there whose duty it is to help him? If it were not for her he would not have a friend on earth. This howling, raging public opinion would banish every friend, even every man who once lived near him. The associates of his life have fled in the day of trouble. Sunshine friends who basked in the noon-tide of its beaming have vanished in the hour of its decline. It is a woman of base profession, of more than easy virtue, of malign fame, of a degraded caste—it is one poor, weak, feeble and if you like it, wicked woman—to her alone he owes his ability to employ counsel to present his defense.

What we want to know is, what have they against that? What we want to know is, why don't they admire it? What we want to know is, why don't they admit the supremacy of the divine spark in the merest human bosom as if to teach that there is good in things most evil? The history of the case is, I suppose, that this man and this woman have formed a mutual attachment, not sanctioned if you like by the usages of society—thrown out of the pale of society—if you like, not sanctioned by the rights of the church. It is but a trust in each other, a devotion to the last, amid all the dangers of the dungeon and all the terrors of the scaffold. They were bound together by a tie which angels might not blush to approve. A bad woman may lose her virtue; it would be infinitely worse to lose her faith, according to her own standard. If you mean to say that it is a reproach to this woman that he has one friend, and that a woman, to stand by him, I say that that is perhaps her greatest virtue. A man who can attach to him a woman, however base in heart and corrupt in life, is not all bad. A woman who can maintain her trust, who can waste her money like water to stand by her friend, whether that friend be her lover or paramour, amid the darkest clouds that can gather, that woman cannot be all evil; and if in vice and degradation and infamy she rises so far above it all as to vindicate her original nature, I must confess that I honor this trait of fidelity. That she might go too far in the defense of her friend, no man can

doubt. If I were charged with the crime of murder and my friends, insects born in a summer's beam, were to flee from me, if my good name stood me in no stead, if I were bound at the altar, if the sacrificial priest were to have his arm bared and knife brandished to strike—my wife would stand by me, and if she should bribe a juror, would I condemn her? Would you? The rigid moralist would condemn and the stern judge would punish, but her act would accord with the principles of human nature—irrepressible, uncontrollable, higher than all law.

That a woman should in adversity and bitterness and sorrow and crime, stand by her friend in the dungeon, on the scaffold, with her money and tears and defiance and vengeance all combined, is human and natural. This woman is bad; she has forgotten her chastity—fallen by early temptation from her high estate; and among the matronage of the land her name shall never be heard. She has but one tie, she acknowledges but one obligation and that she performs in the gloom of the cell and the dread of death; nor public opinion, not the passions of the multitude, nor the taunts of angry counsel, nor the vengeance of the judge, can sway her for a moment from her course. If any of you have it in your heart to condemn and say "Stand back! I am holier than thou" remember Magdalene, name written in the Book of Life.

I feel prouder of human nature. I have learned a new lesson. Hide him in the felon's grave, with no inscription consecrated to the spot; and when you have forgotten it and the memories of the day are past there will be one bosom to heave a sigh—in penitence and prayer, there will be one eye to weep a refreshing tear over the sod, one trembling hand to plant flowers above his head. Let them make the most of it. I scorn the imputation that infamy should rest on him for her folly and faith. Let them make the most of it and when the great Judge of all shall condemn—when in that dread hour you and I and she shall stand at the common tribunal for the deeds done or aimed to be done at this day—if this be remembered against her at all it will be lost in the record of a thousand crimes perpetrated by high and

noble souls. Let a man who feels in his heart no responsive type of such traits of goodness, of truest courage in darkest destiny, let that man be the first to put his hand to the bloody verdict. Beyond this there is nothing more to be said. The imputation on our witnesses is that they went to Belle Cora's. The imputation on their witnesses is the same thing. What then? It proves nothing.

There is public opinion now; there was no such thing as genuine public opinion at the time of the homicide—it was bastard. It is now calm, intelligent, reflecting, determined and just. If you mean to be the oracles of this public opinion, in God's name, speak! If you mean to be priests of the divinity which honest men may worship, answer! If you are the votaries of the other you are but the inflamed Cassandra of a diseased imagination and of a purient public mind. If of the former I bow at your feet in honor of the mysteries of your worship. Against this man the public press so potent for good, so mighty for evil, inflames and convulses the public mind and judgment. There is not one thing they have said that is in accordance with truth and justice; there is not one version they have given that is based on testimony and facts.

My task is performed. In the name of our common humanity; in the name of Him who died for that humanity; by the remembrance of your mothers and fathers; your respect and admiration for woman, the nearest and dearest ties that we can feel; by your consciousness of your own imperfections, I adjure you to consider in mercy. And as you deal with the prisoner may the common Father of us all deal with you. So may the prayers of the mother whose heart yet yearns toward him reach you. So may his future life evince the sincerity of his repentance in the solitude of the jail. So may you be prosperous. And so may you answer for your judgment on that great day when you and the prisoner at the bar shall alike stand up to answer for all the deeds done in the body.

Mr. Inge. Gentlemen of the jury: An important duty devolves upon me in closing the argument for the prosecution.

The ample grounds taken by counsel for the defense would justify me in being equally as disbursive; but your worn and jaded countenances admonish me that it would be improper to do so. I shall therefore confine my remarks to matters pertinent to the case and briefly review the grounds assumed on the part of the State. I am not here to eulogize the memory of the dead, that duty has been more appropriately performed at another place; but I cannot do less than bear my slight testimony to the high, elevated and honorable character of Gen. Richardson. Since 1849 he has occupied positions of honor and trust. Every man in San Francisco who is cognizant of passing events will sustain me when I say that the breath of suspicion has now for the first time soiled his honorable fame. For the first time is the reputation of the deceased assailed; and if a stranger had entered this room one hour ago he would have supposed your duty here was to listen to libels on the dead. There is scarcely a discrepancy in the testimony to his having magnanimity and worth; he was true in hostility, true in peace and true in all the relations of life. It is said that he was prompt to resist an assault and that we claim as to his honor and our pride. But says the counsel we should be allowed to investigate specific acts of Richardson, to prove his rash and desperate character. Gentlemen, did we come here for this? We are to investigate murder and to maintain the laws of the country and to preserve the lives of the living.

The testimony of Dr. McMillan is the first imputation cast upon his name from amid a thousand friends and it is hard to say what act of his could justify such testimony. It is important here, gentlemen, to repeat the remark of Mr. Byrne, that we wish an unqualified verdict of acquittal or conviction.

The evidence in this case is clear, unqualified, and convincing in its character, its incidents and its consistency. On the eve of the 17th of November last, Gen. Richardson was seen to leave the Cosmopolitan in a state of great intoxication. So much so indeed that the witness Bates tells you that although he passed him and spoke to him, the deceased never

saw or recognized him in any way. He was seen to go from the Cosmopolitan along Montgomery and down Clay street to the store of Fox and O'Connor in company with the prisoner at the bar. The acts of all the parties were plainly seen and when opposite the store of Fox & O'Connor were closely watched. Capt. Cotting plainly and clearly tells you that while passing down Clay street his attention was attracted to two men, one of whom had a pistol in his hand; that man he says was Cora. Richardson had no weapon in his hand. The next movement Cotting observed was the pushing of Richardson by Cora into the doorway of Fox & O'Connor's store and the holding of a pistol by the latter to the breast of deceased. He next saw and heard the discharging of a pistol; there were five witnesses to this transaction all of whom agree in the material facts stated. They all agree that Richardson had no weapon and that no struggle took place; Richardson was so drunk as I shall convince you, that he could not resist. The testimony which related is all voluntarily offered by the witnesses, without profit and without price. The state has taken no extraordinary means to obtain evidence, our only testimony emanates from honest and intelligent witnesses. It is from such testimony, gentlemen, that I ask you, if you don't believe that Richardson was slain with the most atrocious malice. We rested our case on such testimony and were willing to abide the issue. But what did the prisoner do? He introduced a previous difficulty and endeavored to connect it with the killing. What were the circumstances of that difficulty?

On the evening of the 16th of November, Gen. Richardson, accompanied by V. Turner and F. McKibben, entered the Cosmopolitan Saloon and was introduced to Charles Cora soon after. Richardson and Cora had occasion to go out, and in a short time Cora came back somewhat excited and wished to know if he had any friends there, as a man had threatened to slap his face. Richardson followed closely after him and repeated the inquiry of Cora as to his having friends there. Even this shows the character of the deceased. Although he had threatened to slap Cora's face he would

not take an unfair advantage of him. Drunk as he was, he exhibited that courage which never deserted him and which formed a part of his every being. This was the origin of the difficulty which resulted in the murder of Richardson, and it is upon this difficulty that the prisoner relies for his defense. It seems, by the testimony of Gen. Addison, that on the morning following, Gen. Richardson expressed to him his humiliation at the occurrence of such a difficulty, and declared that nothing could compensate him for his loss of self-respect by participating in such an affair.

And yet it is said that Richardson sought to murder Cora. It is evident that Cora regarded the threat of Richardson to slap his face as a mortal offense, and one which nothing but blood could wash away. But suppose this was not so; such men as Cora have motives sometimes which actuate them to the commission of desperate deeds. Who knows but what his ambition was to kill a man of high character and to obtain the reputation of having done so. This is plausible and may be true.

By reference to the evidence we find that at 4 o'clock on the day of his death Richardson was very much overcome by wine, and yet in a good natured merry mood. It is contended by counsel that when Richardson left Papy, at that time he promised to go immediately home, but that instead of doing so he went to the Cosmopolitan saloon and enquired of Marsh "if that young man with whom I had the difficulty has been here to-day," and that his action betrayed Richardson's determination to murder the prisoner.

Now gentlemen, as to this man Marsh. Is not his testimony singular from the beginning to the end? He says that he occupied a certain position on the evening of the 15th, which may be possible, but at the same extremely improbable. The rules of the law is that when a man is found testifying improperly in one particular, his whole testimony should be excluded. It is your duty, therefore, to reject his, and so the Court will charge you. Then as to the witness Ragsdale. When he swears as to the interview with Cora and Richardson the night of the killing. He says that when

Richardson mentioned his threat of the previous night, he was very angry, and that he (Ragsdale) told him that if he spoke in that way to him he would tell him to slap his face if he dared. Now gentlemen, if Richardson was irritated sufficiently to talk in that strain, Ragsdale was not the man who would venture to tell him such a thing. He would not have dared to do it and I leave it to you if it is probable that he did. Ragsdale's testimony was false and so is that of Glennon and Thomas.

We next have Mr. Blanchard as a witness, who relates the conversation between Richardson and Cora, when near the corner of Montgomery and Clay streets. He heard Richardson say: "Is it all satisfactory?" and the reply of Cora, "If a man says so and so, what is he to expect." Does this show Richardson to be laboring under a spirit of malice? Does it not show that Cora was irritated by the previous night's threats and was anxious for revenge? The testimony of Glennon and Thomas next claims our attention, and there is one fact, casting aside their bad characters which, of itself, stamped the impress of perjury upon them. Passing, as they allege they did, at the time of the killing, they both deny their having seen a single witness in the case. This fact alone is damaging to their testimony.

THE JURY DISAGREES.

January 16.

JUDGE HAGAR instructed the jury at some length and they retired to consider their verdict.

January 17.

The jury came into court after being out all night and asked for instructions as to whether the occurrences on November 16 should be taken into consideration by them.

THE COURT instructed them in the affirmative.

At 12 JUDGE HAGAR announced that since the adjournment he had receive the following communications from the jury:

"No. 1. We, the jury in the case of the State v. Charles Cora, after a long and careful investigation of the evidence in the case,

differ so widely in opinion that we are forced to the conclusion that it is a moral impossibility for us to agree to a verdict; and as some of us are suffering severely in health from long confinement, and are fully convinced that no good can result from our longer detention as we cannot agree without doing great violence to our consciences under our solemn oaths, therefore we respectfully request that you will allow us to go into court this P. M. to declare the same and receive our discharge. Jury room, January 16, 3 P. M. Signed W. A. Piper, foreman and by all the other members of the jury, individually."

"No. 2. We, the jury in the above-mentioned cause, seek to again represent our position in relation thereto. We think that the long time in which we have been separated from our families and business and that we have now been in deliberation forty-one hours upon the evidence in the case without the possibility of agreeing, together with the fact that several of us are really suffering in health, from privations unavoidably incident to our situation and that the business of others is suffering from their absence, warrant us in requesting and expecting our release. We know that we cannot agree if we are detained here another week, as there are three different opinions and more than one man to each and that it is impossible to unite on any verdict, without as already said, violating our consciences and our solemn oaths."

The jury were summoned into the Court Room.

THE COURT. I have received and considered your two communications and I have brought you back to inquire of you through your foreman whether your opinions still remain the same.

Mr. Piper. Yes, your honor. I may add that I think it a moral impossibility for the jury to agree upon a verdict.

JUDGE HAGAR. Then, gentlemen, there is nothing that I can do further but to thank you for your long service in this trial and to discharge you.¹⁶

¹⁶ "Several statements were afterwards obtained from individual jurors as to how they voted. One juror said that on the first ballot Forbes, Flint, Easterly, Meyer, Vail, Piper and Stowell voted guilty of murder; Haley, Holmes, Olmstead and Eaton for manslaughter. Stowell afterwards changed to manslaughter. The second jurymen said: First ballot for murder, 6; manslaughter, 4; acquittal, 2. Second ballot, murder, 6; manslaughter, 6. Third ballot, murder, 7; manslaughter, 5. Fourth ballot, murder, 8; manslaughter, 4. The jury stood at this vote for 24 hours and also when they left the jury-room, but they agreed to say to outsiders that they stood as they first voted, 6, 4, and 2. A third statement by two jurymen reads: First ballot, 7 voted guilty, 4 voted not

guilty and one for manslaughter. Second ballot, 7 voted guilty, 2 not guilty and 3 for manslaughter. Third ballot 5 voted guilty and 7 manslaughter. Fourth ballot 4 voted guilty and 8 manslaughter. Mr. Haley assures us when the first ballot was taken it was simply to see who were in favor of a verdict of murder and that those who voted against the proposition did not vote for the acquittal of Cora. A fourth statement (also from a jury-man) is: The fourth ballot stood 8 for manslaughter and 4 for murder. Failing to agree on a verdict of manslaughter the jury divided into three opinions as at first." Smith (F. M.) p. 31.

THE TRIAL OF VARIOUS CRIMINALS BY THE SECOND VIGILANCE COMMITTEE SAN FRANCISCO, CALIFORNIA, 1856.

THE NARRATIVE.

What Mr. Bancroft¹ calls the Grand Tribunal and another writer² "the most formidable public tribunal in the history of modern civilization," the Second Vigilance Committee, did not come into being until 1856. Since 1851 San Francisco had grown, the down town streets showed business houses of goodly proportions and private residences of worth, and in the suburbs substantial houses had taken the place of white tents and board shanties. And following the activities of the First Vigilance Committee "the decrease of crime was a subject of general remark. San Francisco was then as quiet and orderly as any Eastern city of equal size."³

After the suppression of lawlessness in 1851 the citizens had much to occupy their attention for several years. Until 1854 money came freely, people seemed to grow richer every day. As a natural result they became intoxicated with prosperity and over-built, over-specified, over-imported and spent with mad extravagance. In 1854 came the inevitable reaction which was precipitated by a dry winter and crop failures, the ruinous speculation and even dishonesty of

¹ BANCROFT, HUBERT HOWE (1832-1917). Born Granville, O. Entered book business in Buffalo, N. Y., and in 1852 established a branch in San Francisco which grew to a great publishing and selling house. Becoming wealthy and interested in the history of the Pacific region he collected a great library on the subject and in 1868, with numerous assistants, began the writing and publication of a series of volumes on the History of the Pacific Coast; in 1900 he presented to the University of California over 6000 volumes including 500 original manuscripts relating to the pioneer history of the State. Author also of *Literary Industries* (1890): *Retrospection, Personal and Political* (1912).

² Atherton (G) California. *An Intimate History*.

³ Popular Tribunals (Bancroft, H. H.), II, 18.

business men and bankers, the looting of the city treasury by officials. In 1854 three hundred out of a thousand business houses failed and in the course of the year there were filed in the courts seventy-seven petitions of insolvency, aggregating many millions of dollars. In the following year the insolvencies numbered one hundred and ninety-seven and several banking houses failed, crippling or ruining outright a large number of depositors and business firms.⁴

With these things came a political degradation which reached its height in the year 1855. In the unsettled condition of society and business and the feverish rush for gold, the respectable classes in the community took little interest or part in public matters or in attending nominating conventions, going to the polls or doing jury duty. And for several years there was a rush to the city of a horde of disreputable characters who in New York and other large cities of the East had served an apprenticeship in all the arts of municipal corruption. Nominating conventions became a farce; bribery, fraud and open violence at the polls was the rule and a ballot box was perfected and used which was so constructed that any number of tickets could be hidden in it in advance, exposed at the proper time and counted so as to make majorities exactly as might be desired.⁵

In this manner were the City officials and the Judges elected. Deputy sheriffs and policemen were not only the friends of criminals but criminals themselves. The courts set loose the worst criminals on the shallowest of technicalities. Over a thousand homicides had been committed in San Francisco between 1849 and 1856 and only one legal execution took place—that of a miserable Spanish murderer name Jose Forni who was hanged on Russian hill in presence of from six to ten thousand spectators, on December 10, 1852.

"This was the opportunity for thousands of human buzzards and they swarmed in, fattening on prosperity and ruin alike. By far

⁴ Atherton (G) p. 170.

⁵ Hittel (T. H.), vol. 3, p. 461.

the most devastating of these to the distracted city were the professional politicians, men of the lowest type who had been educated in the wards of the Eastern cities and whose sole attitude to the world was that of the looter in search of loot. Either finding it expedient to vanish from their native haunts or scenting heavier dividends in vice, they came to the new city by every ship; and while its citizens were using all their energies, first in aggrandizement and pleasure and then to keep their unseaworthy ship above the storm waters, they quietly took political possession. Honest men in fact learned to avoid the polls, gangs of bullies being on hand to relieve the political organization from the embarrassment of honest men's votes. Conventions were a mere matter of form, the inner ring having made its decisions in secret conclave; votes were sold to the highest bidder, ballot-boxes were stuffed, the type in vogue having a "double improved back action" and in which any number of tickets could be hidden in advance: there was always danger that a few honest men might get by the bullies and cast their vote. As this gang of clever rascals appointed all the officials it followed that the judges were as corrupt as most of the lawyers and their social status may be inferred by the fact that they chewed and expectorated in court, sat on the bench in their shirt sleeves, swore and shouted and even cut their corns.

The law suits following the failures of 1854-55 had revealed the utterly corrupt state of the law. No one was convicted, no one could obtain satisfaction; the lawyers were masters of every technicality that permitted evasion or defeat of justice. Lawsuits threatened to outlast a lifetime and an apathetic despair which may be compared to the proverbial lull, settled upon the citizens of San Francisco, half or wholly ruined as they watched prosperity ebbing daily; politics and law in the hands of crooks and criminals; and thieves, looters and murderers as thick as the fleas in the sand. Even the newspapers were terrorized: and although the editors had many duels they were not with the men they most feared.⁶

"Nowhere before nor since has pure legality been made such a fetish. It was a game played by lawyers, not an attempt to get justice done. Since in all criminal cases at least the prosecution was carried on by one man and his associates poorly paid and hence of mediocre ability and the defense conducted by the keenest brains in the profession, it followed that convictions were rare. Invariably an attempt generally successful was made to arrest the homicide. If he had money he hired the best lawyers and rested secure. If he had no money he disappeared for a time. Almost everybody had enough money or enough friends with money to adopt the former course.

It was a point of professional pride with a lawyer to get his client free. Indeed to fail would be equivalent to losing a very easy game. The whole battery of technical delays, demurrers etc., was at his command; a much larger battery than even the absurd

⁶ Atherton (G) p. 171.

criminal courts of our present day can muster. Delays to allow the disposal of witnesses were easily arranged for, as were changes of venue to courts either prejudicial in favor of the strict interpretation of "law" or frankly venal. Of shadier expedients such as packing juries there seemed no end. Your honorable, highminded lawyers—which meant the well-dressed and prosperous—had nothing to do with such dirty work; that is, directly. There were plenty of lawyers not so honorable and highminded, called in as "counsel". These little lawyers, shoulder strikers, bribe givers and takers were held in good-humored contempt by the legal stars—who employed them! Actual dishonesty was diluted through a number of men. Packing a jury was a fine art. Initially was needed connivance at the sheriff's office. Hence lawyers as a class were in politics. Neither the stellar lawyer nor the sheriff knew any of the details of the transaction. A sum of money went to the former's "counsel" as expenses and emerged considerably diminished in the sheriff's office as "perquisites". It had gone from the counsel to somebody like Mex Ryan, from him to various plug-uglies, ward heelers, shoulder strikers, from them to one or another of the professional jurymen and then on the upward curve through the sheriff's underlings who made out the jury lists to Webb himself. The thing was done. In this tortuous way many influences were needed. The most honest lawyer's limit as to the queer things he would do depended on his individual conscience. It is extraordinary what long training and the moral support of a whole profession will do toward educating a conscience. Do not despise unduly the lawyers of that day. We have all of us good friends in the legal profession who will defend in court a criminal they know to be guilty as charged. They will urge that no man should go undefended; and will argue themselves into a belief that in such a case "defence" means not merely fair play but a desperate effort to get him off anyhow-trained conscience. If such sophistries are sincerely believed by honest men nowadays it cannot be wondered at that queerer sophistries passed current in a community not five years old. It was difficult to draw the line between the men who mistakenly believed themselves honest and those who knew themselves dishonest.

But once in politics there could be no end. In this field the law rubbed shoulders with big contracts, big operations. A city was being built in a few years out of nothing by a busy, careless and shifting population. The opportunities for making money on public works—either honestly or by jobbery—were almost unlimited. The mood of the times was extravagant. From the still unexhausted placers poured a flood of gold, hard money, tangible wealth; and a large percentage of it paused in San Francisco, changed hands before continuing its journey. Immigrants brought with them a lesser but still significant sum. Money was easy. People could and would pay high taxes without a thought, for they would rather pay well to be let alone than bother with public affairs. The city treasury should have been full to bursting. In addition the

municipality was rich in its real estate. The value of all land had gone up immensely; any time more cash was needed it could be quickly raised by the sale of public lots. The supply seemed inexhaustible.

Like hyenas to a kill, the public contractors gathered. Immense public works were undertaken at enormous prices. Paving, sewers, grading, filling, lighting, wharves, buildings were all voted; and the work completed in the quickest, flimsiest, most slipshod fashion and at terrible prices. The Graham House, a pretentious frail structure that had failed as a hotel because a swamp lay between it and the city was bought at a huge price to serve as a city hall. It was a veritable white elephant and even the busy populace spared time to grumble at the flagrant steal. Nobody knew what it would cost to make the thing habitable, even. Soon to every one's relief it burned down. The property was then swindled over to Peter Smith. The Jenny Lind Theatre, an impossible, ramshackle structure, was purchased over the vigorous protest of every decent citizen for the enormous sum of \$300,000. Another \$100,000 was alleged to have been spent in remodelling and furnishing it. Then it was solemnly declared "unsuited to the purpose." It also burned down in one of the numerous fires. But the money was safe!

To get such deals as these through "legally" it was of course necessary that officials, councilmen, engineers etc. should be sympathetic. Naturally the big operators as well as the big lawyers had to go into politics. Elections came soon to be so many farces. In some wards no decent citizen dared show his face. "Shoulder strikers" were openly hired for purposes of intimidation. Bribery was scarcely concealed. And if things looked doubtful there were always the election inspectors and judges in reserve who could be relied upon to make things come out right in the final count. The proper men were always returned as elected. If violence or fraud were alleged, lawyers always got the accused off in a strictly legal manner.

In these matters, it must be repeated, no opprobrium ever rested on either the big lawyers or the big operators. "Expenses" went to the underlings and after some mysterious subterranean manipulation of which the big fellows remained blandly unconscious, results came back.

In the minds of men profits of any sort were legitimate provided they were "legal" but especially against so vague an entity as a community. Civic consciousness had not been born in them for the simple reason that the city was constituted perfectly to suit them. Only when men are dissatisfied with their government do they seek to become responsible for it. There was no active public opinion against them. Men were too busy to bother with such things. Occasionally a fairly vigorous protest against some peculiarly outrageous steal made itself heard, but the men who made it were either cranks or it was suspected they had been pinched in some way. They merely represented the opposition any active man expects.

And every last one of these merry, jovial pirates was inordi-

nately proud of the ship he was helping to scuttle! That one fact, attentively considered, explains much."⁷

The time was ripe for a MAN and he appeared—James King of William. On the evening of November 17, 1855, General William H. Richardson, United States Marshal for the District of California, was assassinated on the street by a gambler named Charles Cora. (See *ante* p. 16.) The public mind already exasperated by the conditions in the city, with no confidence in the prosecuting officials or the courts and convinced that both money and political influence would be exerted to save the assassin, was deeply stirred and for a time it seemed as though lynching would be the sequel. But better counsels prevailed and when, the next day, the coroner's jury returned a verdict that the murder was premeditated with nothing to mitigate it, the citizens were hopeful that justice would be done. But when it was known that Cora's mistress, a rich courtesan, had retained several of the leaders of the bar to defend him and the *Bulletin*, King's newspaper, declared that \$40,000 had been raised by the gang with which to bribe the jury and officials, there was little surprise when the prosecution ended in a disagreement of the jury and the prisoner was returned to the custody of a friendly sheriff. Mr. King in scorching editorials denounced not only the verdict but continued his denunciations of the corrupt officials of the city. On May 14 he published an article which stated that a man named James P. Casey, one of the politicians that had come from New York and one of the most prominent of the local corruptionists but who held an elective office, was a discharged convict from Sing Sing prison. That evening as the editor was walking home he was shot and mortally wounded by Casey. (See *post* p. 101.)

The murderer at once took refuge in the jail while the crowds began to gather on the streets. His victim was recognized by the honest, peace loving people of San Francisco as their friend. They loved him for his honesty and

⁷ White (S. E.) p. 177.

bravery in fighting the forces of evil, and in an hour thousands of them were congregated around the building to which he had been removed. An attack was made on the jail but repulsed by the guards. A brother of Mr. King addressed the crowd from the window of the building, saying:

"Fellow citizens,—I have but little to say about this matter. It is a cool, premeditated murder; perpetrated by the hand of a d—d Sing Sing convict, and by a plan of the gamblers of San Francisco. He went into the office of my brother to day, and was told to go away. About an hour ago I was at the old Natch's pistol gallery, and he told me that my brother was to be shot. If he knew it, did not the gamblers know it? and was it not a premeditated plan; and that by the gamblers of this city? Why did not the officers know it and interfere?—Gentlemen, we have got to take that jail, and to do so we must kill those officers, if they do not give way to us; and we must hang that fellow up."

The streets were filled with an excited crowd which also gathered around the jail where Mayor Van Ness⁸ addressed them, asking them to disperse and let the law take its course, assuring them that justice would be done, to which the mob responded with cries of: "Look at poor Richardson; where is Cora? How is it in his case? Down on such justice." More guards and military were brought up and by three in the morning the citizens had all disappeared and the military had undisputed possession of the field.

But about seven o'clock that night William T. Coleman,⁹

⁸ VAN NESS, JAMES (1808-1872). Born Burlington, Vt., son of a former governor; removed to California, was active in San Francisco politics; first Alderman then Mayor; subsequently moved South to pursue agriculture; State Senator 1871. Died at S. L. Obispo. See Bancroft Hist. Cal. v: 6, p. 767. San Francisco Bulletin, Jan. 2, 1873.

⁹ COLEMAN, WILLIAM TELL, (1824-1893). Born, Cynthiana Ky. Grad. Univ. of St. Louis. Arrived in Sacramento by Overland route 1849 and opened a store. Soon removed to San Francisco where he became one of the leading merchants. Organized a line of clipper ships to N. Y. 1855. Was a member of 1st Vigilance Committee. From 1857 to 1864 he resided in New York City. During the five stormy years that had passed since the organization of 1851 disbanded, he had risen steadily to an eminence of clean and honor-

one of the leaders of the First Vigilance Committee, appeared upon the Plaza. He found himself among a surging mass of people wild in their violent demonstrations. As he approached a large group on Washington street,

able citizenship in that community whose fierce light permitted no man to be misvalued; and as his courage, fairness and gift for leadership were equally recognized it followed as a matter of course that when a new committee of Vigilance became inevitable he should be its president. He was only thirty-two, but few of those leading citizens estimable or otherwise, were older. "From a lumber business in St. Louis, William T. Coleman came to California in the summer of 1849, gold-hunting, but traffic captured him first at the tented city of Sacramento carrying him thence to Placerville and finally to San Francisco and New York. His early life was the school of business experience, a hand to hand conflict with fortune where lusty strength was guided by wits newly whetted each morning for the day's encounter. During this part of his career I find no trace of questionable transactions, of business aberrations and those double dealings, not to say fraudulent failures and downright swindles which stain the early record of so many who have since achieved pecuniary success. On the contrary Mr. Coleman's life has been one of honorable example from the beginning. Brought into prominence by superior skill and application both at home and abroad his good name has ever been a shining mark for calumny—yet always one from which the fiery darts of evil-minded men fell harmless. No man has done more to elevate the standard of commercial morals in California or to strengthen commercial credit of San Francisco. During the eastern financial panic of 1857 when confidence was shaken and California's reputation particularly low, almost single handed Mr. Coleman wrought in New York an entire revulsion in feeling concerning Pacific coast credits. If there be one whom it were safe to hold up as a model Californian this is the man. Throwing himself into the vortex of adventure with all the ardor of high ambition and with a mind of that highly tempered metal susceptible of the keenest edge, carefully avoiding meanwhile the shoals upon which so many noble characters were wrecked, who of eight thousand was a fitter chief than he? In honesty, practical sense and presence of mind he was not surpassed by Themistocles. Destined like Caesar to success divine, in him was combined in a remarkable degree moral and physical courage. Without the slightest approach toward rowdyism, without pugilistic proneness in the heart, or in manner, preferring to the last moment the logic of mind to the logic of muscle, keeping his fine physique under the coolest control of intellect, he could nevertheless, upon the failure of argument employ the ultimate appeal with consummate force. * * * Mr. Coleman was a man of intellect, of sound practical understanding, of genius if you like and if his path had led him through the more abstract realms of mind he would

Arthur Ebbetts, George Ward and others, members of the committee of 1851, stepped forward and said: "We are looking for you". "For what?" asked Coleman. "To organize the Vigilance Committee", they replied. "Discussion is unnecessary. This state of things has been borne

have made his mark in any one of these various fields of intellectual ambition, of science, statesmanship or jurisprudence. To a thorough education early acquired he added general information; he was eminently skilled in all the ways of commerce. When work was to be done he was one with the workers, saying not "Go thou," but "Let us go". In non-essentials he was in all respects yielding but on vital points of policy or principle he was as Gibraltar. He liked to have his own way as we all do, but his way was usually the best way. When he could not have it however, when his associates ruled against him, as was frequently the case, he yielded with as good a grace as any man I ever knew. Though conciliatory toward inferiors, and toward those who follow well, should any attempt coercion, he could be as haughty as a prince of Persia. * * * The executive committee comprised the best talent in the city and that Mr. Coleman was the best man in the committee for the position of president there can be no doubt. * * * Mr. Coleman though as thoroughly saturated a Californian as ever lived, was a gentleman in the highest sense of the term. He was possessed of honesty and integrity which some who call themselves gentlemen lack. He had a bright, clear intellect, trained and burnished and a well stored mind always ready for use—qualities which many so-called gentlemen deem superfluous. To qualities of mind which did him honor, were added kindness of heart and genial courtesy. * * * In physique he presented a figure which would be remarked even in a senate chamber or in any gathering of cultivated men anywhere. Tall, large, symmetrical in form with a high, intellectual forehead and eyes of illimitable depth and clearness, his presence was always imposing and would indeed be felt as awe-inspiring were it not for the visible good-humor that radiates from every feature. He is a man; place him anywhere you will and he fills the position. Yet with all his commanding presence he drops to the level of his associates, whoever or whatever they may be, with instinctive grace and dexterity. In him unite more than in any other man I ever met, the dignity of sincerity with genial affability. He was essentially the most natural of men; there was nothing artificial about him. So was Mr. Brannan natural, caring for God nor man; but the two were quite different. In regard to the sterling qualities of heart and mind the character of Mr. Brannan was cast iron. Burnish it as you would it was always iron, rough and unyielding, whereas Mr. Coleman's character I should liken to a gold nugget unstamped by conventionalities, but bright and polished as from some freshly split sierra." Bancroft, H. H. *Popular Tribunals*, p. 117-121.

long enough. We can endure it no longer. We must organize, protect ourselves and save the country or submit to further disgrace and ruin". Coleman acquiesced in their sentiments, thanked them for the offer of leadership but declined, saying he would assume his share of the risk and responsibility but serve in the ranks only. But that night he drew up the following notice which appeared in the newspaper the next morning:

THE VIGILANCE COMMITTEE

"The members of the vigilance committee in good standing will please meet at No. 105½ Sacramento street this day, Thursday 15th instant, at nine o'clock a. m.

By order of the Committee of Thirteen."

In the morning at the appointed place, the old lodge-room of the American party, a large number of the citizens assembled—many of the members of the old Vigilance committee. William T. Coleman was elected president and Isaac Bluxome, jr.¹⁰ secretary, and an executive committee of

¹⁰ BLUXOME, ISAAC (1829-1890). Born New York City; educated at private school Flushing, L. I.; placed in hardware business by father; arrived in San Francisco June 1849. Entered merchandise business; member of Citizens' Band of Safety of 1849, that helped to drive out the "Hounds." Founder of California National Guards. Member Vigilance Committees of 1851 and 1856. After giving up mercantile business became a coal and iron broker in San Francisco and later engaged in general mining in Amador County. Died in San Francisco. See, *The Bay of San Francisco*, a history. (Lewis pub. Co. v. 1, 1892.) *San Francisco Chronicle*, Nov. 10, 1890.

"The duties and responsibilities of Secretary Bluxome were very different in the Second Committee, from those of the first. Counselor as well as scribe, custodian of the archives as well as of all the unwritten secrets of the Association, he served this, his second long term, with a steady patience which places him second to none in point of patriotism of the pure and unselfish quality." Bancroft, *Popular Tribunals*, II, 131.

"He possessed a warm heart and most genial disposition. Amidst an assembly of most jovial companions, his face beaming with good humor and the fun-wrinkles radiating from his eyes, he was the last person a stranger would take for a 'strangler,' as they of law and order delighted to call the men of vigilance. Malice was a stranger to his heart; no hatred toward his fellow men was harbored in his breast. In all that solemn assembly of resolute men

thirty was appointed. The executive committee should report to the general committee after careful investigation, the names of such persons as the interests of society demanded should leave the state; that the organization, so long as occasion required, should be deemed permanent; that the executive committee should have power to strike from the rolls any suspicious or objectionable member, and a constitution was adopted.¹¹

there was not one who in sincere pity for the poor fellow about to suffer for his crimes, excelled him whose duty it was to write the death-warrant." Id. 251.

¹¹ *Constitution of the Committee of Vigilantes of San Francisco. Adopted May 15, 1856.* Whereas, has become apparent to the citizens of San Francisco that there is no security for life and property, either under the regulations of society, as it at present exists, or under the laws as now administered; and that by the association together of bad characters, our ballot boxes have been stolen and others substituted, or stuffed with votes that were not polled, and thereby our elections nullified, our dearest rights violated, and no other method left by which the will of the people can be manifested; therefore, the citizens whose names are hereunto attached, do unite themselves into an association for maintenance of peace and good order of society—the preservation of our lives and property, and to insure that our ballot boxes shall hereafter express the actual and unforged will of the majority of our citizens; and we do bind ourselves, each unto the other, by a solemn oath, to do and perform every just and lawful act for the maintenance of law and order, and to sustain the laws when faithfully and properly administered; but we are determined that no thief, burglar, incendiary, assassin, ballot-box stuffer, or other disturbers of the peace, shall escape punishment, either by the quibbles of the law, the insecurity of prisons, the carelessness or corruption of police, or a laxity of those who pretend to administer justice; and to secure the objects of this association, we do hereby agree:

1st. That the name and style of this association shall be the Committee of Vigilance, for the protection of the ballot-box, the lives, liberty and property of the citizens and residents of the City of San Francisco.

2d. That there shall be rooms for the deliberations of the Committee, at which there shall be some one or more members of the Committee appointed for that purpose, in constant attendance at all hours of the day and night, to receive the report of any member of the association, or of any other person or persons, of any act of violence done to the person or property of any citizens of San Francisco; and if, in the judgment of the member or members of the Committee present, it be such an act as justifies or demands the

A military organization was at once recognized as a necessity and it was determined to organize the whole association into centuries or military companies of 100 each, ten companies to constitute a regiment. Mounting a table, Mr. Coleman called out: "Numbers 1 to 100 will please assemble in the southwest corner of the room; numbers 101 to 200 will take the first window; 201 to 300 the next window" and so on until the members present were separated into fifteen sets. *Que le Français se mettent au*

interference of this Committee, either in aiding in the execution of the laws, or the prompt and summary punishment of the offender, the Committee shall be at once assembled for the purpose of taking such action as the majority of them, when assembled, shall determine upon.

3d. That it shall be the duty of any member or members of the Committee on duty at the committee rooms, whenever a general assemblage of the Committee be deemed necessary, to cause a call to be made, in such a manner as shall be found advisable.

4th. That whereas, an Executive Committee, has been chosen by the General Committee, it shall be the duty of said Executive Committee to deliberate and act upon all important questions, and decide upon the measures necessary to carry out the objects for which this association was formed.

5th. That whereas, this Committee has been organized into subdivisions, the Executive Committee shall have the power to call, when they shall so determine, upon a board of delegates, to consist of three representatives from each division, to confer with them upon matters of vital importance.

6th. That all matters of detail and government shall be embraced in a code of By-Laws.

7th. That the action of this body shall be entirely and vigorously free from all consideration of, or participation in the merits or demerits, or opinion or acts, of any and all sects, political parties, or sectional divisions in the community; and every class of orderly citizens, of whatever sect, party, or nativity, may become members of this body. No discussion of political, sectional, or sectarian subjects shall be allowed in the rooms of the association.

8th. That no person, accused before this body, shall be punished until after fair and impartial trial and conviction.

9th. That whenever the General Committee have assembled for deliberation, the decision of the majority, upon any question that may be submitted to them by the Executive Committee, shall be binding upon the whole; provided nevertheless, that when the delegates are deliberating upon the punishment to be awarded to any criminals, no vote inflicting the death penalty shall be binding, unless passed by two-thirds of those present and entitled to vote.

centre.¹² Now each company will elect its own officers, but those officers are subject to the orders of the Executive Committee.’¹³

Drilling was kept up vigorously and at one time the military force numbered fifty-five hundred fighting men. None of the military, officers or men received any pay. Those of the police who received pay were for the most part poor men, devoting their entire time to the work and their pay was about the same as that of the regular city police. There was no military costume stipulated, but it was understood that each as far as possible was to dress in dark colors, not necessarily black, and was to wear a frock coat and cap. Some companies wore belts, some carried cartridge-boxes, each company followed its own inclination in this regard; each company had its own drill room where its members worked day and night to accustom themselves to the use of arms and to acquire skill in military movements. They were in deep and solemn earnest, so they learned rapidly. Far different was their personnel from that ordinarily found in military companies. It was no hireling soldiery.

10th. That all good citizens shall be eligible for admission to this body, under such regulations as may be prescribed by a committee on qualifications; and if any unworthy persons gain admission, they shall on due proof be expelled; and believing ourselves to be executors of the will of the majority of our citizens, we do pledge our sacred honor, to defend and sustain each other in carrying out the determined action of this committee, at the hazard of our lives and our fortunes.

¹² This command in a foreign language was made necessary by the extraordinary number of Frenchman who had first answered the call of gold in 1849, and then with equal enthusiasm responded to this demand for essential justice.

¹³ Bluxome's number on the roll was thirty-three and he thereafter subscribed his minutes and all papers and documents emanating from the committee with the signature of "33 Secretary" which soon became more potent than that of any governor or judge in the country. The official seal of the executive committee consisted of the stamp of an open eye denoting sleepless vigilance, above which was the word "Committee" and below the words "Fiat Justitia Ruat Coelum"—"No creed, no party, no sectional issues".

Here is a picture of No. 105½ Sacramento street on the morning of the 15th.¹⁴

They ascended it and immediately found themselves in a small room back of the stage or speaker's platform. It contained about a score of men. Their aspect was earnest, serious, grave. Although there was a sufficiency of chairs they were all afoot gathered in a loose group, in whose centre stood William Coleman, his massive shoulders squared his large, bony hands clenched at his side, his florid complexion even more flushed than usual, his steady eye travelling slowly from one face to another. Again the strange contradictions in his appearance struck Keith with the impact of a distinct shock—the low, smoothed hair, the sweeping blue-black moustache, the vivid color, and high cheek bones of the typical gambler—the clear, firm mouth, incisive, deliberate speech, the emanation of personality that inspired confidence. Next him talking earnestly stood Clancy Dempster, a small man, mild of manner, blue eyed, with light, smooth hair, the last man in the room one would have picked for great firmness and courage, yet destined to play one of the leading roles in this crisis. The gigantic merchant Truett towered above him, he who had calmly held two fighting teamsters apart by their collars; and homely, stubborn, honest Farwell, direct, uncompromising, inspired with tremendous single-minded earnestness, but tender as a girl to any young dog; and James Dows, rough and ready, humorous, blasphemous, absolutely direct, endowed with "horse-sense," eccentric but of fundamentally good judgment; Hossfros of 51; Dr. Beverly Cole, high spirited, distinguished looking, courtly; the excitable, active, nervous, talkative but staunch Tom Smiley; Isaac Bluxcome whose signature as "33 Secretary" was to become terrible; fiery, little George Ward, willing—but unable—to whip his weight in wild cats.

Coleman was speaking evidently in final decision.

"It is a serious business," said he. "It is no child's play. It may prove very serious. We may get through quickly, so safely, or we may so involve ourselves as never to get through."

"The issue is not of choice but of expediency" urged Dempster. "Shall we have vigilance with order or a mob with anarchy?"

Coleman pondered a moment then threw up his head.

"On two conditions I will accept the responsibility—absolute obedience, absolute secrecy."

Without waiting for a reply to this he threw open a door and followed by the others stepped out on the platform. A roar greeted their appearance. Johnny and Keith remaining modestly in the background, lingered near the open door.

The hall was filled to its utmost capacity. Every inch of space was occupied and men perched on sills clung to beams. Coleman raised his hand and obtained an immediate dead silence.

"In view of the miscarriage of justice in the courts" he announced

¹⁴ The Gray Dawn (White, S. E.), p. 290.

briefly "it has been thought expedient to revive the Vigilance Committee. An executive counsel was chosen by a representative of the whole body. I have been asked to take charge. I will do so but must stipulate that I am to be free to choose the first council myself. Is that agreed?"

A roar of assent answered him.

"Very well, gentlemen. I shall request you to vacate the hall. In a short time the books will be open for enrollment."

The number enrolled soon reached fifteen hundred. All that day the applicants, orderly and grim with purpose, were passed through the line. By mid-day it was seen that the Know-Nothing Hall was going to be too small for the meeting that would later take place. Therefore a move was made to the Turnverein Hall. After enrolling no man departed from the vicinity for long. Short absences for hastily snatched meals were followed by hurried returns lest something be missed. From time to time the activities of the Executive Committee which had been in continuous session since its appointment, were shown in its resolution that no city or county officer should be admitted to membership in the organization and its notice to the sheriff that he and his deputies would be held strictly accountable for the safe custody of the prisoners in their charge.

On Saturday, May 16, permanent quarters were secured and occupied. The building known as Fort Gunnybags was on Sacramento Street between Front and Bush. The front was protected by a sand-bag breast work ten feet high and six feet thick. The ground floor was used for field pieces and heavy ammunition, the small arms being arranged in racks above. The offices and prison-cells were on the second floor where was also the Executive chamber, a large room hung with American flags and those of other nations. It was here the trials took place and the fatal issues determined. Upon the roof was a large alarm bell and several loaded cannon.

Though the Vigilance Committee now numbered 5000 and its leaders were the best citizens of San Francisco, there were many good men who did not agree with the idea of superceding the chosen officers of the law in this way and

invited by the sheriff to maintain him and the public authorities. A meeting was called and a resolution passed calling upon all good citizens to see that in the event of the death of Mr. King, Casey should be immediately indicted by the grand jury, tried and if convicted, at once sentenced and executed. They called themselves the Law and Order party,¹⁵ appointed William T. Sherman, then a banker in

¹⁵ The distinction between the nominal "law and order" people and the real citizen of this kind who dominated the Vigilance Committee and made it a great and practical success, is thus stated by Mr. White:

The first of these elements—that can with equal justice be called the parasitic or the middlemen class—consisted in itself of several sorts of people. The nucleus was a small, intellectually honest set of men who believed in the law, *per se*, in the sacredness of formal institutions in the constitution and in the subservience of the individual to the constitution. This was temperamental. Behind them were many much larger groups of those who needed either the interpretation or the protection of the law for their private interests. These were of all sorts from honest but literal-minded dealers, through shady contractors and operators down to grafters and the very lowest type of strong-arm bullies. The tone and respectability came from the first, the practical results from the second. The first class had a genuine, intellectual contempt for men whose minds could not see—or at least would not accept—the same subtleties that it did. Its members were fond of such phrases as the "lawless mob" or the "subversion of time-honored institutions". This small, subjectively honest, conservative, specially trained element must not be forgotten in the final estimate of what later came to be known as the "Law and Order" party.

On the other hand was first of all an equally small nucleus of thinking men whose respect for the law, merely as law, was not so profound; men who were reluctantly willing to admit that when law completely broke down in encompassing justice, individualism was justified in stepping in. Behind them was a vast body of more or less unthinking men who recognized the indubitable facts that the law had become a mere farce, that justice had degenerated to tricks and who were therefore instinctively against law, lawyers and everybody who had anything to do with them.

Strangely enough this made for lawlessness on both sides. Those who believed in "law and order" committed crime or misdemeanor or more injustice, sure of escape through some technicality. Those who distrusted courts, administered justice illegally with their own hands! Nor was this merely on theory. San Francisco at that time was undoubtedly the most corrupt and lawless city in the world. Street shootings, duels, robberies, ballot-box stuffing, bribery, all the crimes traceable to a supine police and venal or

the city and general of the militia, to head their organization and called upon the governor of the state, J. Neely Johnson, to come to the city which he did, having an interview with the executive committee of the Vigilantes which Bancroft describes in these words:

"What do you want?" demanded the governor. "Peace," replied Coleman "and we would like to have it without a struggle." "But what is it you wish to accomplish?" "Much that the vigilantes of 1851 accomplished; to purify the political and moral atmosphere, to do what the crippled law should do but cannot. This done we will gladly retire. Now governor" continued Coleman, "you are asked by the mayor and certain others to bring out the militia and crush this movement. I assure you it cannot be done, and if you attempt it, it will cause you and us much trouble. Do as McDougal did; see, as he saw in a single demonstration, a local reform, merely. We ask not a single court to adjourn; we ask not a single officer to vacate his position; we demand only the enforcement of the laws which we have made. If you deem it the duty of your office to discountenance these proceedings let your position be in appearance only. You know the necessity of this measure; you know the men managing it; you know that this is no mob, no dis-tempered faction, but San Francisco that speaks. Leave us alone in our shame and sorrow; for as God lives, we will cleanse this city of her corruption or perish with her. So we have sworn. Issue your proclamations if you feel that the dignity of the law may be best maintained by frowning on justice; declare your manifestoes if the government can maintain its self-respect only by public protestations against virtue; but leave us alone in our righteous purposes."

"Sir," said the governor, taking Coleman by the hand, "go on in your work! let it be done as speedily as possible and my best wishes attend you!"

technical courts were actually so commonplace as to command but two or three lines in the daily papers. Justice was completely smothered under the technicalities and delays.

The situation would have been intolerable to any people less busy than the people of that time. For political corruption in a vigorous body politic is not as pessimists would have us believe, an indication of incipient decay, but only an indication that a busy people are willing to pay that price to be left alone to be relieved of the administration of their public affairs. When they get less busy or the price in corruption becomes too high, then they refuse to pay. The price San Francisco was paying was becoming very high, not only in money but in other and spiritual things. She could still afford to pay it; but at the least pressure would no longer afford it. Then she would act. White, "Gray Dawn," p. 194.

Later the governor changed his mind and supported the alleged law and order party and much antagonism developed the next few days between these two factions. But as Mr. Coleman said, the Vigilance Committee was San Francisco speaking and nothing could now stop it and it now determined to take charge itself of the two murderers, Cora and Casey. The Executive Committee ordered that its military companies should assemble next morning at nine o'clock. So on Sunday morning the troops moved as directed from Ft. Gunnybags to the jail. Through all the streets where they passed the doors and windows were filled with anxious and curious spectators. As the throng moved forward its numbers were continually being augmented and persons from all directions were hurrying toward the jail. Several of the companies came in different directions and simultaneously the bayonets were seen from Stockton, Dupont and Kearney streets. The neighborhood about the jail was crowded with spectators long before the arrival of the troops; but the way was soon cleared and the different companies were drawn up so that they commanded the entire square bounded by Broadway, Vallejo, Kearney and Dupont streets, most of the force being stationed in front of the jail on Broadway street. After the proper disposition of the troops the houses in the vicinity were searched to ascertain if there was reason to anticipate an attack from the rear. The cannon was then placed in the center of the street in front of the jail, its muzzle directly at the front door of the jail.

As the army approached the jail the sheriff went to the cell of Casey and said: "There are two thousand armed men coming for you and I have not thirty men about the jail." Casey replied: "Then do not peril your life and that of the officers in defending me, I will go with them".

The executive committee were formed into a solid square, directly in front of the jail and the Citizens' Guard formed a hollow square about them and all appeared ready for action. A deputation of the committee waited at the door and requested the sheriff to deliver up the prisoner, Casey. Accordingly, on arriving at the door three raps were made. Sheriff

Seannell appeared and Mr. Meyers F. Truett on behalf of the committee, informed the sheriff the object of their errand and desired him to hand-cuff the prisoner and deliver him at the door. Without hesitation the sheriff repaired to the cell of Casey and informed him of the request of the Vigilantes. Casey positively refused to allow them to hand-cuff him. He drew a knife which he had concealed about him and flourishing it declared that he would plunge it into his heart sooner than be taken by the Vigilance Committee. Another consultation was held by the committee during which time Casey said to Marshal North that if two respectable citizens would assure him that he should have a fair trial and not be dragged through the streets that he would go with them.

Accordingly, Messrs. Truett, Coleman, Thompson and Farwell, on behalf of the sub-committee, went into the prison and held an interview with Casey through the wicket of the cell, in which they assured him that he should be taken through the streets in a closed carriage and that every opportunity should be afforded him to have a fair trial. Mr. North, after placing the irons on the prisoner, conducted him to the front door, and delivered him into the hands of the committee. He was then conducted to a coach, and at his request, Mr. North took a seat beside him, and Wm. T. Coleman and Mr. Truett occupied the same carriage. Another conference was held with the Sheriff, requesting the person of Charles Cora, the murderer of General Richardson, to be delivered into the hands of the committee. The request was declined and time was asked to consider it. The committee gave the Sheriff one hour to decide, and at the same time warned him that no person must be allowed to pass through the jail door either way, except the Sheriff or his deputies. As the guard came down the prison steps with Casey, a burst of applause arose from the vast assembly, but by a move of the uplifted hands of the committee, silence was instantly restored.

About one-half the armed force were left to guard the jail and the rest served as guard and escort to the prisoner. The same streets were traversed returning as when going to the

prison and although they were packed with human beings, there was not the slightest rush or disturbance. The movement commanded the respect of the citizens and officers, for the dignity and decorum observed. The procession was as solemn as a funeral cortege and when it passed through Montgomery street there were some who uncovered their heads, out of respect to the men who filled the ranks. The Committee reached the rooms on Sacramento street about two o'clock; Casey was conducted to the upper room and placed under guard.

The committee had sentinels stationed on every block in the thickly built portions of the city to guard against thieves or house burners carrying on their depredations.

In accordance with their notifications to the sheriff the committee proceeded back to the jail and renewed their demand for Cora. Cora was delivered up and removed to the committee rooms in the same manner as Casey. The work of the day having been accomplished the various companies, except those on guard, quietly dispersed. Each company marched out separately and afterwards went down to the wharves and discharged their arms into the bay. This was done to prevent accidents and to have them fresh loaded in case of another call. About three hundred men were kept on guard at the committee rooms.¹⁶

On May 20 Mr. King died and on the same day the trials of Casey and Cora began (see *post* p. 105) and two days later they were both hanged.

The Vigilance Committee now declared itself a permanent tribunal with special reference to election frauds and rascally officials and their hangers-on. A Black list was prepared of disreputable characters who were arrested and brought before it as fast as possible. They confined the death penalty to the crime of murder and adhered to this restriction during all their rule, although the interest of justice at times seemed to warrant its suspension. Banishment was the only punishment awarded the worst criminal against whom the crime of

¹⁶ Smith (F. M.) p. 148.

murder could not be proved. A committee of five on foreign relations was appointed to furnish transportation for those who might be requested to leave the state.

On May 27, the Executive Committee tried Yankee Sullivan,¹⁷ Billy Mulligan¹⁸ and Martin Gallagher. This trial

¹⁷ This man by birth an Irishman had been transported from England to Australia for larceny. He escaped to New York, became a prize-fighter and winning a match while wearing the American colors was afterwards known as Yankee Sullivan though his real name was Francis Murray. He learned the tricks of the political gangs of New York and coming to California he found immediate employment both as a pugilist and a ballot box manipulator. He was made an officer of election in the Presidio district and managed to return Casey as duly elected to the office of Supervisor, though he had not been a candidate. During his imprisonment he was very penitent and was afraid he would be hanged and when told that he would be banished he begged to be sent alone as he feared that his old associates would kill him on account of the disclosures he had made. That night he was found dead in his cell, having cut two arteries with a carving knife.

¹⁸ Before coming to San Francisco, Billy Mulligan was the Beau Brummel of the New York gamblers and a desperate character. He came to San Francisco during the gold excitement and took a prominent part in local politics. He served as keeper of the County jail under Sheriff Scanlan. When the Vigilantes drove Mulligan from San Francisco he returned to New York and to his former haunts. One night he attempted to kill a man in a fashionable gambling place and for this crime he was sentenced to serve two years at Sing Sing.

While awaiting trial at the Tombs a young woman visited the prison and fell desperately in love with Mulligan. She sacrificed her diamonds and jewelry to meet the expenses of his trial. She offered to marry him and he consented and the bride accompanied the convict to Sing Sing on the following day. She worked night and day in his behalf and at the expiration of two months procured his pardon. But Mulligan deserted her immediately after being released and returned to San Francisco in January, 1864.

On the afternoon of July 7, 1865, while suffering from delirium tremens he imagined that the Vigilantes were going to hang him. He fired a pistol from his window and seriously wounded a Chinese laundryman who lived across the street. John McNabb, a friend attempted to approach his room; Mulligan shot him dead. After shooting John Hart of Eureka Hose Company No. 4, officers with rifles were stationed in the windows of the neighborhood and finally Mulligan again appeared at the window and was shot dead by Officer Hopkins. Celebrated Criminal Cases of America (Duke, T. S.) San Francisco, 1910.

which was partly upon deposition taken by the Committee and partly oral testimony, resulted in the conviction and sentence the same night, that whereas the evidence adduced had established conclusively that the accused had for years been disturbers of the peace of the city, destroyers of the purity of the elections, active members and leaders of an organized gang who had invaded the sanctity of the ballot-boxes, and perfect pests to society; therefore resolved that they should be transported out of the territory of the United States at the earliest practicable moment and that they should be warned never to return to California under penalty of death.

The next persons were Billy Carr and William, alias Wooley, Kearney, who were tried, convicted and sentenced in the same terms as Mulligan, Gallagher and Sullivan.

Efforts were made to arrest Edward McGowan and Peter Wightman as accessories in the murder of King. But they had fled.¹⁹ But many others of the same class were tried and sent out of the country, others left of their own accord.²⁰

¹⁹ See Trial of Edward McGowan, *post* p. 166.

²⁰ Mr. Smith (San Francisco Vigilance Committee of '56) p. 81, gives the following list taken from the Committee's archives:

James P. Casey, executed May 22d, 1856.

Charles Cora, executed May 22 '56

Joseph Hetherington, executed July 29th, '56.

Philander Brace, executed July 29th, '56.

Yankee Sullivan, suicided May 31st—expelled.

Chas. P. Duane, shipped on "Golden Age" June 5th.

William Mulligan, shipped on "Golden Age" June 5th.

Wooley Kearney, shipped on "Golden Age" June 5th.

Bill Carr, sent to Sandwich Islands June 5th.

Martin Gallagher, sent to Sandwich Islands June 5th.

Edward Bulger, sent to Sandwich Islands June 5th.

Peter Wightman, ran away about June 1st.

Ned McGowan, ran away about June 1st.

John Crow, left on "Sonora" June 20th.

Bill Lewis, shipped on "Sierra Nevada" June 20th.

Terrence Kelley, shipped on "Sierra Nevada" June 20th.

John Lawler, shipped on "Sierra Nevada" June 20th.

William Hamilton, shipped on "Sierra Nevada" June 20th.

James Cusick, ordered to leave, but refused to go, and fled into the interior.

James Hennessey, ordered to leave, but fled into the interior.

T. B. Cunningham, shipped July 5th.

On June 2, Governor Johnson²¹ issued a proclamation. After reciting that he had received satisfactory information that combinations to resist the execution of legal process by force existed in the county of San Francisco and particularly by an organization styling itself the Vigilance Committee and that the power of said county had been exhausted and was not sufficient to enable the sheriff to execute such process; "now, therefore, I, J. Neely Johnson, Governor of the State of California by virtue of the power vested in me by the constitution and laws thereof, do hereby declare said county of San Francisco in a state of insurrection and I hereby order and direct all of the volunteer militia companies of the county of San Francisco, also all persons subject to military duty within said county, to report themselves for duty immediately to Major-General William T. Sherman commanding second division California militia to serve "in the performance of military duty under the command of said Sherman, until disbanded from service by his order." He then, apparently, as if not entirely satisfied with this very liberal call for the second division, further ordered that all volunteer militia companies organized or which might be organized in the third, fourth and fifth military divisions of the state and all persons subject to military duty in said military divisions, should hold themselves in readiness to respond to and obey orders of the governor of the state or said Sherman for the performance of military duty in such manner and at such time and place as might be directed by the governor. And he furthermore ordered and directed all associations, combinations or organ-

Alex. Purple, shipped July 5th.

Tom Mulloy, shipped July 5th.

Lewis Mahoney, shipped July 5th.

J. R. Maloney, shipped July 5th.

Dan Aldrich, shipped July 5th.

James White, shipped July 21st.

James Burke, alias "Activity," shipped July 21st.

Wm. F. McLean, shipped July 21st.

Abraham Kraft, shipped July 21st.

²¹ JOHNSON, JAMES NEELEY (1828-1872). Born in Indiana; Governor of California, 1856-1858; subsequently Judge Supreme Court of Nevada. Died in Salt Lake City.

izations whatsoever existing in said county of San Francisco or elsewhere in the state in opposition to or in violation of the laws thereof, and more particularly the association known as the vigilance committee of San Francisco, to disband and each and every individual thereof yield obedience to the constitution and laws of the state, the writs and processes of the courts and all legal orders of the officers of the state and the county of San Francisco.

In accordance with this, General Sherman issued orders commanding the officers of volunteer companies and independants to fill their companies to their highest standard, and report for duty. Also, for all citizens of San Francisco, not belonging to any fire company, or, otherwise exempt from military duty, to enroll as militia; form companies of fifty, appoint a captain to each company, report to him for duty. The proclamation of the Governor was laughed at, coming as it did, at such a late hour. The call for recruits by General Sherman was weakly responded to; with the exception of less than a hundred, the citizens not only declined but most of the volunteer companies disbanded and joined the Vigilance Committee.

In the meantime a number of citizens, among them J. B. Crockett, E. W. Earl, F. W. Macondray, James V. Thornton, H. S. Foote, James Donahue, M. R. Roberts, John J. Williams, John Sime, Bailie Peyton and G. W. P. Bissell undertook to bring about a settlement of the dispute between the Governor, the Law and Order party and the Vigilance Committee, but failed. The next day General Sherman resigned his commission of Major General, lauding the action of the Chief Executive and advising the Committee to disband. But that tribunal desired no advice, and on June 9, it issued the following address:

To the People of California:—

The Committee of Vigilance placed in the position they now occupy by the voice and countenance of the vast majority of their fellow-citizens, as executors of their will, desire to define the necessity which has forced their present organization.

Great public emergencies demand prompt and vigorous remedies.

The people, long suffering under an organized despotism, which

has invaded their liberties, squandered their property, usurped their offices of trust and emolument, prevented the expression of their will through the ballot box, and have corrupted the channels of justice, have now arisen in virtue of their inherent right and power. All political, religious and sectional differences and issues have given way to the paramount necessity of a thorough and fundamental reform and purification of the social and political body.

The voice of the whole people have demanded union and organization, as the only way of making our laws effective, and regaining the right of free speech, free vote, and public safety. For years they have patiently waited and striven in a peaceful manner: and in accordance with the forms of law, to reform the abuses which have made our city a by-word. Fraud and violence have foiled every effort; and the laws to which the people looked for protection, were distorted and rendered effete in practice, so as to shield the vile; they have been used as a powerful engine to fasten upon us tyranny and misrule.

We looked to the ballot box as our safe-guard and sure remedy. But so effectually, and so long was its voice smothered, the votes deposited in it by freemen so entirely out numbered by ballots thrust in by fraud at midnight, or multiplied by false counts of judges and inspectors of election, that many doubted whether the majority of the people were not utterly corrupt.

Organized gangs of bad men, of all political parties, or who assumed any particular creed from mercenary and corrupt motives, have parcelled out our offices among themselves, or sold them to the highest bidders; have provided themselves with convenient tools to obey their nod, as clerks, inspectors and judges of election; have employed bullies and professional fighters, to destroy tally lists by force, and to prevent peaceable citizens from ascertaining, in a lawful manner, the true number of votes polled at our elections; and have used cunningly contrived ballot boxes, with false sides and bottoms, so prepared that by means of a spring or slide, spurious tickets (placed there previous to the election) could be mingled with genuine votes! Of all this, we have the most irrefragable proofs. Felons from other lands and states, and unconvicted criminals, equally as bad, have thus controlled public funds and property, and have often amassed sudden fortunes, without having done an honest day's work with head or hands. Thus the fair inheritance of our city has been embezzled and squandered; our streets and wharves are in ruins; and the miserable entailment of an enormous debt will bequeath sorrow and poverty to another generation.

The jury box has been tampered with, and our jury trials have been made to shield the hundreds of murderers, whose red hands have cemented this tyranny, and silenced with the bowie-knife and the pistol, not only the free voice of an indignant press, but the shuddering rebuke of the outraged citizen. To our shame be it said, that the inhabitants of distant lands already know that corrupt men in office, as well as gamblers, shoulder strikers, and other

vile tools of unscrupulous leaders, beat, maim, and shoot down with impunity, good, peaceable, and unoffending citizens. Such as those earnest reformers, who, at the known hazard of their lives, and with singleness of heart, have sought, in a lawful manner, to thwart schemes of public plunder, or to awaken investigation.

Embodied in the principles of republican government are the truths that the majority should rule; and when corrupt officials who have fraudulently seized the reins of authority, designedly thwart the execution of the laws of punishment upon the notoriously guilty; then the power they usurped reverts back to the people from whom it was wrested. Realizing these truths, and confident that they were carrying out the will of the vast majority of the citizens of this country, the Committee of Vigilance, under a solemn sense of responsibility that rested upon them, have calmly and dispassionately weighed the evidences before them, and decreed the death of some, who, by their crimes and villanies had stained our fair land.

With those that were banished, this comparatively moderate punishment was chosen, not because ignominious death was not deserved, but that the error, if any, might surely be on the side of mercy to the criminal. There are others scarcely less guilty, against whom the same punishment has been decreed, but they have been allowed further time to arrange for their final departure, and with the hope that permission to depart voluntarily, might induce repentance and repentance amendment, they have been suffered to choose within limit their own time and method of going. Thus far, and throughout their arduous duties they have been, and will be guided by the most conscientious convictions of imperative duty, and they earnestly hope that in endeavoring to mete out merciful justice to the guilty, their counsels may be so guided, by that power before whose tribunal we all shall stand, that in the vicissitudes of after life, amid the calm reflections of old age, and in clear view of dying conscience, there may be found nothing we would regret or wish to change. We have no friends to reward, no enemies to punish, no private ends to accomplish.

Our single heartfelt aim is to the public good; the purging from our community of those abandoned characters whose actions have been evil continually, and have finally forced upon us the efforts we are now making. We have no favoritism as a body, nor shall there be evinced, in any of our acts, either partiality for, or prejudice against any race, sect or party. While thus far we have not discovered on the part of our constituents any indication of lack of confidence, and have no reason to doubt that the great majority of the inhabitants of the county indorse our acts, and desire us to continue the work of weeding out the irreclaimable characters from the community; we have, with deep regret, seen that some of the State authorities have felt it their duty to organize a force to resist us. It is not impossible for us to realize that not only those who have sought place with a view to public plunder, but also those gentlemen who, accepting offices to which they were honestly

elected, have sworn to support the laws of the State of California, find it difficult to reconcile their supposed duties with acquiescence in the acts of the Committee of Vigilance, when they reflect that more than three-fourths of the people of the entire State sympathize with, and endorse our efforts; and as all law emanates from the people, so, also, when the laws thus enacted are not executed, the power returns to the people, and is theirs whenever they may choose to exercise it. These gentlemen would not have hesitated to acknowledge this self-evident truth, had the people chosen to make their present movement a complete revolution, recalling all the power they had delegated, and re-issuing it to new agents under new forms. Now, because the people have not seen fit to resume all the powers they have confided to executive or state officers, it certainly does not follow they cannot, in the exercise of their inherent, sovereign power, withdraw from corrupt and unfaithful servants the authority they have used to thwart the ends of justice.

Those officers whose mistaken sense of duty leads them to array themselves against the determined action of the people, whose servants they have become, may be respected, while their errors may be regretted; but none can envy the future reflections of that man who, whether in the heat of malignant passion or with the vain hope of preserving by violence a position obtained through fraud and bribery, seeks, under the color of law, to enlist the outcasts of society, as a hireling soldiery in the service of the State; or urges criminals, by hopes of plunder, to continue at the cost of civil war, the reign of ballot box stuffers and tamperers with the jury box.

The Committee of Vigilance believe that the people have entrusted to them the duty of gathering evidence, and after due trial, expelling from the community those ruffians and assassins who have so long outraged the peace and good order of society; violated the ballot box, overridden law, and thwarted justice. Beyond the duties incident to this, we do not desire to interfere with the details of government. We have spared and shall spare no effort to avoid bloodshed or civil war; but undeterred by threats of opposing organization, shall continue, peaceably if we can, forcibly if we must, this work of reform, to which we have pledged our lives, our fortunes and our sacred honor. Our labors have been arduous, our deliberations have been cautious, our determinations firm, our counsels prudent, our motives pure; and while regretting the imperious necessity which called us into action, we are anxious that this necessity should exist no longer; and when our labors shall have been accomplished, when the community shall be freed from the evils it has so long endured, when we have insured to our citizens an honest and vigorous protection of their rights; then the Committee of Vigilance will find great pleasure in resigning their power into the hands of the people, from whom it was received.

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In accordance with a published call of the Committee appointed by preliminary meetings, and a general desire to

endorse the action and policy of the Vigilance Committee, a large and enthusiastic meeting of citizens assembled, June 14, in front of the Oriental hotel. By twelve o'clock every space formed by the junction of the three streets, and all the buildings in the vicinity, were thronged with people who had laid aside their pleasures and business, to come out and counsel upon the matters that agitated the community. It was estimated that there were fifteen thousand people. Promptly at twelve the officers of the meeting and the members of the press were admitted to the balcony upon the second floor of the hotel; and H. M. Naglee, from the nominative committee, came forward, called the meeting to order, and placed in nomination the following persons for permanent officers of the meeting; which nominations were unanimously confirmed: President, Bailie Peyton; Vice-Presidents, H. M. Naglee, F. A. Woodworth, Gardner Elliot, Dan'l Gibb, G. F. Shaw, H. M. Gray, Sam'l J. Hensley, Gustave Touchard, S. C. Wass, L. Maynard, L. McLane Jr., Gwyn Page, T. C. Hambly, David Chambers, Abel Guy, John Sime, E. W. Church, Wm. McMichael; Secretaries, A. G. Randall, Theodore Payne. The following speeches were made:

Bailie Peyton: "Fellow-Citizens—The object of this meeting has been announced by the chairman of the committee. On the evening of the 12th inst. a preliminary meeting was held at the auction rooms of Wm. Middleton, at which resolutions were adopted endorsing the action of the Vigilance Committee and asking the Governor to withdraw his proclamation.

The object of this meeting is to endorse those resolutions, and get an expression of the public will upon the matters now occupying public attention. I am glad to see that the call has been so promptly responded to, and the meeting so largely attended. We are here to consider principles of the first magnitude, and which may result in the shedding of much innocent blood. One of the objects of this meeting is to prevent so dire a calamity, and your action to-day may do much towards securing this result; one which we all desire.

The Vigilance Committee must be sustained, or must be put down. If they are put down, it must be at the point of the bayonet. The question, then is, whether we appeal to the Governor to put them down in this way, or whether we will ask him to withdraw his opposition to this body of our people.

The causes which have brought this Committee into existence are well known and familiar to you all. The little band who oppose the Committee, claim that there is no necessity for this organization,

or for a revolution of the Government. I am frank to say, that I take issue with them; and I now declare that there was no other remedy to redress our wrongs, which we had suffered for years, until the fountain of government had become corrupt, by frauds and impositions practiced upon the ballot box. In this country, and under a government like ours, each man is a sovereign, and the people are the sovereigns of the law, each of whom has equal right to say who shall be their rulers. I ask you then, fellow-citizens, if we in San Francisco, have even ever had a government based upon the free popular will of the legal voters? (Many voices—"No, no, no.")

Those who have made our laws, have done so without authority; and those who executed them were unauthorized by the will of their constituents. They have acted by fraudulent powers of attorney,—yea, they acted with forged ones—and in this manner foisted themselves and their obnoxious laws upon us. Every citizen has a right to go to the polls, and there, by his vote, express his will freely as to who shall rule us. But what chance has a man in San Francisco against this infernal patent box which they have brought into use? Honest people may go and vote, but a "Mulligan" can neutralize all their votes by a single touch of this complicated machinery. You might as well go into a harvest field with an old, common, rusty, primitive reaping sickle, against one of McCormick's double-horse, patent, improved reaping machines, and expect to compete with it, as to get fairness when these fellows use these boxes.

With the partners of the candidates to watch over and arrange the ballot boxes, and a set of bullies and ruffians to knock down honest people, what chance have you to get anything like fairness? As matters have been, people are afraid to go to the polls, for their lives are in danger. Let us look at the condition of affairs for a few years past. Who controlled your elections? Who have filled your offices? And what is the result of all their rule and government? You now find your taxes squandered, your credit ruined, your business destroyed, your streets delapidated, and homes almost invaded.

These matters went on by the forbearance of the people, until one of the worst of the crew, the prince of the ballot box stuffers, struck down in our midst, at noon-day, one of your honored and distinguished citizens, and a high-minded gentleman, as well as a husband and father. We also find his accomplices in the vicinity of the scene, and ready to aid the assassination; and when the people attempt to arrest them, they fly to the jail for safety and an asylum. Every man in this community read his fate in that of Mr. King. If he could be shot down with impunity, who among us was safe? For this cause have the people arisen in their combined strength, and demanded justice, and will have it. They have done well; they have done right; they deserve our support; they shall have it; they deserve a monument to their memories. [Chorus and loud applause.] They have accomplished more in a few days towards correcting evils, reforming abuses, punishing crime, and improving our

social condition, than our courts or the officers of the law have done in as many years.

No, fellow-citizens, it seems to me that, taking a proper view of this important subject, we cannot come to any other conclusion than that the Committee have not arisen without good and sufficient cause. All law has been set at defiance by these men who cry "law and order" now. They had possession of the ballot boxes, and were surrounded by a set of fellows who always swarm about the polls, and who assume to make and execute our laws. What could peaceable citizens do? They were met at the polls by an armed band of ruffians, and resistance to them was dangerous. The Committee have arisen to put these fellows down, and they will accomplish it before they are done with the work. It is an Herculean task; but they will accomplish it. They are determined to cleanse out the Augean stable; They will turn the river of honest sentiment through the stable, and sweep out the whole craft of them. They have determined to drive them from our midst, and they will do it. They have the prayers of the churches on their side, and the smiles of the ladies—God bless them! (cheers and applause). The ladies are always right, and their endorsement of any cause would insure success; and it is enough for me to know that the ladies are with the committee.

Fellow-citizens, if you are the right bowers of the Committee, and I doubt not you are, from your hearty endorsement of its action, I know of nothing that could overcome them unless it came from abroad (cheers). The Vigilance Committee had but little trouble in storming the jail and hanging two fellows, and this is only the beginning of the great work before them. I would compare the work to Hercules, the hero of an old story. Hercules while a child in his cradle strangled two snakes. The Vigilance Committee in its infancy have strangled two monstrous felons, who richly deserved their fate.

This was the commencement of their work. Our hero next captured a peculiar sort of a bird, with claws and beak of iron and brass. This was the most difficult task ever assigned him, but he accomplished it. The Committee have caught some birds of the same description; they have the brass bills and claws; they are known and marked. They have the crows and other unclean birds. The chief of the vultures—the notorious Ned McGowan—it has been difficult to find. He may now be in some cave in our midst. Probably he is in some dark cellar at the base of Telegraph Hill, or other invisible place, but he may yet come to light. Now I think you are going to support the Committee, if not you would not be here. If such is your intention, let it be done by great numbers. Let us show to the Governor that if he fights the Committee he will have to walk over more dead bodies than can be disposed of in the Cemetery.

I know the Governor very well. He is amiable and kind-hearted; and disposed to do right, but he has unfortunately listened to bad advice. If he had been left to himself, we should not have had his

proclamation; and were he now to consult his own feelings, he would withdraw the proclamation. Let us show the Governor then (I wish he were here) what a demonstration is here made for the Committee. This sight before me is one of the things that a blind man can see. Why has not our own Governor done as others before him have done? Why has he not first applied to the President of the United States, and laid the case before him previous to calling out the army? Many instances are on record of similar kind, where such a course was pursued; and I would like to have him apply to Frank Pierce, and let him send an army to our relief. I would then want him to send them over the plains, and have them make a wagon-road as they came over. It is clearly his duty to apply to the Chief Executive in an emergency like that which now exists, if a resort to arms is determined upon.

Now, fellow-citizens, I will not detain you with further remarks. It is unnecessary to talk to you, for I see you are unanimous in your approval of the Committee. Let us endorse all that they have done, and support them in the work before them. Let us be ready to fight for them if necessary.

A. F. Woodworth read the resolutions as follows:

WHEREAS, the events of the past few weeks have been of such a character as to agitate, in an unusual manner, our whole population, and to have produced an organization of a very large body of our most valued citizens, for the purpose of expelling from this community peaceably if possible, but, if necessary forcibly, a band of men, known as habitual violators of the public peace, who set the laws openly at defiance, who plunder the public purse with impunity, who violate the sanctity of the ballot box by fraudulent contrivances, who destroy the purity of our elections, corrupt the candidates for office, and notoriously sell official stations to the highest bidder; and go openly and avowedly armed in the most public thoroughfares and ruthlessly shoot down those who oppose or expose them—many of which evils and abuses are of such a character that the laws, as they at present exist, have failed to provide any adequate remedy. AND WHEREAS, a large portion of our citizens have not heretofore seen proper to identify themselves with these movements, but now deem it their duty, calmly and decidedly, to impress their opinion upon the subject of these evils and remedy; therefore

Resolved, that we do not regard the present attitude of the citizens' organization as threatening to the public safety and tranquility, and we believe that from them no infraction of the public peace and order is to be apprehended;

Resolved, that we, as citizens, retain our entire confidence in the constitution and laws of this State, and the constitution and laws of the United States, and in their efficacy for the maintenance of public tranquility, and the general prosperity; and that we solemnly deprecate all agitation of the subject of constitutional reform at this crisis, inasmuch as a calm and peaceful state of society and mature reflections are absolutely required, when the fundamental law of the land is to be discussed or amended;

Resolved, That we believe his Excellency, the Governor, has been misinformed in relation to the necessity which forced upon the citizens of San Francisco their extra judicial organization, and that he be respectfully requested to withdraw his proclamation of June 3d.

Resolved, That the official corruptions, so commonly charged in this community, ought not to be construed as to embrace all the judicial officers of this county, a majority of whom are beyond reproach.

Resolved, That we recommend all of our citizens, and especially those who control the press, to avoid exciting discussions and irritating appeals to the community, and urge the exercise of that cool discretion which the occasion requires;

Resolved, That we have the fullest confidence in the people, and the people's organization known as the Committee of Vigilance of San Francisco, and in their ability and determination to maintain the common safety; and that we see no cause to doubt that their exercise of the power necessary for the purpose, will be judiciously controlled and directed;

Resolved, That there is no longer any reason for alarm; that any governmental interference, or action which would tend to produce a collision, is now unnecessary, and would be absolute madness; and in a short time we hope to be able to congratulate ourselves and our absent friends that these evils (of which all complain) being ended, we shall be as proud to boast of our social and moral conditions as we are of our genial climate and productive soil;

Resolved, That if we should be disappointed in our hopes of the peaceful and early termination of the present difficulties, then we stand ready to organize and maintain the right.

Resolved, That the president and officers of this meeting be constituted a standing committee of the people, whose duty shall be, 1st. To devise and arrange a plan of organization of those who sympathize with the "Committee of Vigilance," and when in the judgment of said standing committee the emergency of the case demands it, to perfect such plan, by calling together our fellow-citizens, enrolling their names, and adopting such other measures as they may deem necessary to render such organization the most efficient for the protection of public and private property, and the maintenance of the rights of the people, in the event of a collision, between the authorities and the Committee of Vigilance. 2d. To call upon our fellow-citizens for contributions to a "Safety Fund;" which fund shall be held by such standing Committee, subject to the orders of the Chairman of the Executive Committee of Vigilance, and should any portion of said fund remain undisturbed at the disbanding of said Committee of Vigilance, to divide such surplus, equally, between the Orphan Asylums of this city.

The resolutions were unanimously adopted.

Wm. Duer: Fellow-citizens—I have been honored by this invitation to address my fellow-citizens for a few moments on the important matter in which all are interested. I do not appear here, nor

have I taken any active part in present affairs, for the purpose of seeking notoriety. I feel it my duty as a citizen caring for the welfare of the city, as a lover of purity in every department of Government and society, to step boldly forward and endorse those who have attempted a glorious work of reform. There are times when the voices of all should be heard on great questions that concern every member of the community, it now becomes these people to say whether they will sustain the evils which exist, or rally around the organization which has assumed the responsibility of ridding us of the worst crimes that ever corrupted a civilized city. If any man wishes to know my opinion I will tell him fearlessly that I am with the Vigilance Committee. (Applause.) I recognize in them pure; I see in their course dignity and integrity, firmness and quietness.

If they have done anything that honest and virtuous citizens may not approve, I have not seen it; and if any opposing force, by whomsoever it may be commanded, is sent to threaten an attack, though I am not a young man full of activity, yet I am ready to assist the Committee with all the strength I possess. (Applause.) The opponents of the committee have but one cry, and one argument, and that is law and order. (Laughter.) So am I in favor of law and order, but not that kind which has long prevailed in San Francisco. (Great applause.) It is the duty of all to be in favor of the laws and the public peace, but it is not our duty to submit to the plundering, murderous rule of men who neither respect the rights of others, nor the requirements of the laws made for the general protection. We owe to the constitution reverence and obedience, and as we have surrendered certain natural rights in order to be governed, we owe to laws a full acknowledgment of their necessity. But the right to revolutionize is reserved to us. We have no right to rise up and overthrow the government, yet we can claim, in the most positive terms, the privilege of so regulating our local affairs that our lives and property will be made safe through the correct administration of law under the constitution.

In England it has been a custom of judges to wear wigs. This peculiarity everyone sees and knows as belonging to the courts; yet take the wigs off and good judges are left; but take away the judges and nothing is left but the wigs. Now we have the ballot-box, constitutional laws, and public offices; still they are of no proper use to us; their purity and genuineness have been taken away, and nothing is left but the wig. We have nothing to lean upon for protection. The unoffending and respected citizen may be insulted, beaten, murdered on the street, in daylight, in the presence of the passers-by, but the desperado laughs at the law, and defies any attempt at punishment. There is never a certainty that the offender of any grade will be punished according to his offenses. Not one in five hundred is subjected to the penalties of violated law; but the whole desperate, infamous horde are permitted to assassinate and control the better classes. Why! the condemned practice of duel-

ling is a christian and civilized institution, beside the daily crimes in our streets. The conduct of those engaged in trampling down law and order has created in our midst worse than barbarism, and, for us to longer submit would be an insult to the civilized world, a disgrace to the city and state, and to ourselves. Look at the number of murders committed in California during the past year. There were probably more than five hundred; and I undertake to say, that not more than five of the perpetrators have been punished according to the forms of law. This terrible condition of things is not confined merely to this and other cities, but it extends throughout the State; and in the interior there has been no abatement, save through the measures adopted by the people. For years the inhabitants have suffered from the depredations of a crowd of cattle-stealers; and when it was known, by the best of proof, that there was no remedy at law, the people have taken upon themselves the infliction of punishment, and from this mode more security has been established. This is the only way left to free the country from thieves, outcasts and murderers. We have seen full well that we also must rely on that course, or sink still lower into the great wave of vice that has undermined all our best interests. This is the purpose of the Vigilance Committee, and it is our duty to see that they are sustained, and we will do it! [Cheers.]

Yet, the law and order party, some of whom doubtless are worthy men, insist that our remedy is in the ballot boxes. In the ballot box in the hands of Liverpool Jack and Billy Mulligan. These fellows and their clan are the guardians of the ballot box. We are cautioned against revolution and anarchy, and pointed to the ballot box for the maintenance of the constitution and the laws. We must not revolutionize, because the ballot box is a thing of all healing power. I have witnessed revolutionary proceedings in the South American States, but until I saw them I could not tell why there were so many revolutions in the countries. I find that it is owing to the special guardianship of the ballot-box. There it is surrounded by armed soldiers, and if the voter murmurs as every republican should, he is arrested for attempting to overthrow the government. (Renewed applause and laughter.)

It is said there are no proofs of this ballot box stuffing despotism of which we complain, and which the Vigilance Committee intend to destroy. How men can pretend to support a cause of such palpable error, I am unable to explain. In the addition to the results of what we all know was a regular system of ballot box stuffing in this city, I will add the outrages of San Mateo. I was called as counsel in the investigation of the election returns of that county, when the attempt was made to contest the right of those purported to be elected to occupy the offices. The evidence adduced showed the vilest knavery ever perpetrated, in three precincts, called "Chris. Lilly's."

At Belmont and Crystal Springs, there were but three hundred legal voters; but "Liverpool Jack," James Hennessy and their abettors returned fifteen hundred. At Crystal Springs, the honest

people found on the morning of the election, five men whom they have never before seen, and who had much to say about the election, and seemed to be very anxious that the ballot box should be protected. (Laughter.) So much so, that they returned five hundred votes as having been polled, when there were only about thirty legal voters in the precinct.

When I saw these alarming and monstrous frauds, I was astounded; and asked the hard-working and peaceable farmers why they allowed such villainy in their neighborhood. Said they: "We can't help ourselves; if we try to hinder your San Francisco rogues from doing as they like, they will shoot our cattle, burn our houses, and it may be, murder us." Here we have a complete illustration of the extent of ballot-box stuffing power; and it is that which we have now undertaken to crush, through the efforts of the Vigilance Committee. [Great applause.] It is this noble work which the Governor and his "Law and Order" party wish immediately suspended. This is the insurrection which is to overthrow the government, and separate California from the Union. It will be in vain that that species of argument is brought to bear upon the organization of the people; it will increase and spread, in spite of opposition, interposed by governors, generals and ballot-box stuffers.

An old lady, named Mrs. Partington, once tried to prevent the Atlantic from flowing into her cabin. It was to no purpose that she plied her mop; it would do no good; the tide went to its height, and subsided when it had completed its flow. Thus it is with the reform movement, and the "law and order" opposition. The Governor is quite an amiable gentleman, but he has not a very strong mind. He is under the influence of men stronger minded, and worse in principle; yet their combination to disband the Vigilance Committee will prove no more powerful than the old woman and her mop. Let them shout and parade if they wish; they will at length sink into the ocean of public contempt. Law and Order! What has "law and order" been in San Francisco? Were I an artist, and should design a picture representing the great embodiment of "law and order" in San Francisco, I would draw, in hideous tints, a dark, dismal cellar, and there around a gambling table, place Casey, Mulligan, Liverpool Jack, "Judge" McGowan, and others of their kind, engaged in inventing a new ballot-box, by which they intend to cheat all honest men of their voice at the elections. [Sensation and applause.] In the back ground I would arrange, behind masks, others lending approval to the damnable scene before them, and ready to purchase the benefit of the foul invention. This would be a true representation of "law and order" in San Francisco.

The Vigilance Committee have dealt justly toward some of this gross and intolerable tribe, and I hope they will yet remove the masks from those in the back ground.

The charge constantly made that the real object of the Committee is to subvert the constitution and depose the Executive. We are all loyal to the constitution, and desire it to remain undisturbed and

untarnished, and we desire that the government shall remain as the people established it; but because we are trying to regulate our local affairs, we object to interference on the part of the Executive, nor can we agree to assist in maintaining his curious law and order by taking up arms to spill the blood of our fellow-citizens who are engaged in the cause of virtue. (Applause.) Because my country is invaded by a foreign foe, am I to join in plundering the houses of my countrymen, and in scattering desolation through the land? And in this unholy crusade against the best portion of the community, these shall not find in us any help, though there come five hundred Governors and five hundred Major-Generals. (Cheers.) The political atmosphere is becoming purer already, through the friends of honor, truth and right. The storm will soon pass, and you may return to your homes with the full knowledge of greater safety than you have ever enjoyed in the splendid city of the Pacific. May you be blessed in your avocations; but as old Ethan Allen said, when commencing the surrender of the Ticonderoga, "in the name of God and the continental Congress." You say to the ballot box stuffers, shoulder strikers, murderers, corrupt office holders, strumpets, and all evil characters, "you must surrender in the name of God and the Vigilance Committee."

G. W. Baker: Fellow-Citizens—I see before me the vast public mind of the city of San Francisco. I see by this that the crisis has already passed. I see that the people have confidence in Providence and the Vigilance Committee. It is a fearful thing to see so many of our fellow-citizens banded together, and against the laws of the country; but it is more fearful to see another body of men arming to war against the good citizens of a state, and that, too, by the authority of a commonwealth. I am not addressing myself to the Vigilance Committee, but to the great mind of San Francisco. The issue has been made on this question; the lines are drawn, and now which side will you choose? Let us consider the merits of each party. What has brought the Committee into existence? It is not the shooting down of one citizen. But this act was the signal for this great rally, which promises to redress the wrongs of years. For six long years have the people of this city been ground down by the heel of oppression; and the assassination of Mr. King brought matters to a crisis, and they determined to desist no longer. We must judge the Committee by what they have done. They have not dethroned law; they have not rendered life less secure; they have not jeopardized the rights of citizens in their property. It is true they have gone contrary to the constituted authorities, but they have done injustice to none. I undertake to say that people never felt so secure in life and property as they do at this present moment.

How is it with the "law and order" party? Of what is that composed? For the most part, of intriguing politicians, bar-room wire pullers, grog shops loafers; men without character or reputation; and men who do not respect or observe the laws. If they had the numerical force and power to-day, they would inaugurate the same state of things that has afflicted us for the past five years. You

have got to endorse one party or the other. There is no neutral or middle ground. I think, therefore, that every good citizen feels ready and willing to endorse the Vigilance Committee. The evils that have brought this state of things upon us originated in the organization of the political parties. All parties are upon the same footing in this respect. The whole machinery is worked by a few hired bullies and ruffians. The primary elections are controlled by these fellows, and they make the nominations which you are to support, and thus you are forced to submit to their dictations. You go to the polls without thought or reflection, and cast the ticket prepared for you, and help to carry out their will. I call upon you then, to turn your attention to the professional politicians and street loafers, who do nothing from year to year but connive at elections, and practice fraud upon the ballot-box. I do not refer to, or speak of, any particular man or party, but I speak of one of the greatest evils that exist among us.

Look at your rulers since 1849. All of these fellows have had offices, or shared in them. And their influence is not confined to this city; it extends all over the state like a net work. By their system of fraud and plunder they have controlled all the offices of any importance in the city and state. With five hundred such men banded together for such a purpose, what may they not do?

It is impossible to stop them by the regular process of law. It is idle to talk about it. They have the law in their own power, and redress or change is perfectly impossible. There is no way to correct this evil, but the one adopted by the Committee. The people must rise in their majesty and strength and drive these pipe laying loafers out of the country. If you want good laws, if you want good officers, you must turn your attention to the trafficking politician. Look at your Custom House, and other Federal offices. They are filled with these fellows, who are now enjoying the profits of the subordinate positions, and they are retained in consequence of their strength and influence at the polls. These games have to be played, and unless these men are taken care of by the officers, they will overthrow the party and elect others. This is the reason that no good, respectable man can get a subordinate position in these offices. They have only one vote each, and have not the hardihood and disposition to cast more. Here is the great evil. These vile birds are posteried into office, and are thus enabled to live from one election to another. I have thrown out these suggestions for your considerations, and I hope to God the time has come when these vile ruffians will be driven from us. (Cheers.)

Mr. Peyton: (exhibiting the celebrated double-back-action patent ballot-box recently recovered by the committee). Here is the orator of the occasion. I beg to introduce to you a harp of a thousand strings. I am sorry that I cannot present to you the harpist, Ned McGowan. This is the old wooden horse. It has many curious and ingenious contrivances and works by various springs and catches. There are some gentlemen here who understand how to work it, I don't. They know its secret operations and slides. I want you all

to understand it (showing the mysteries of the box by drawing the slides and exhibiting the tickets). This is a powerful machine. It will elevate the meanest vagabond in the country to the highest office in the state. It ought to be sent to Washington and deposited in the archives of the Union. Gentlemen, you have now seen the great curiosity, and as other speakers have not arrived it is moved that we adjourn.

On May 31, Governor Johnson went to the Navy yard at Mare Island and requested aid from Captain David G. Farragut²² then Commandant at that post. Farragut said he had no power to interfere without authority from Washington and refused to do so.

On June 4, Governor Johnson wrote to Major-General John E. Wool²³ commanding the Pacific division of the United States army at Benitia, stating that the existence of the vigilance committee, their resistance of legal process and their threats of continued opposition to the constituted authorities had compelled him to issue his proclamation; that the military force called into the service of the state was wholly destitute of the munitions of war necessary to render it effective; that its entire dependence to obtain them was upon General Wool and asking that such arms, accoutrements and ammunition might be furnished as General Sherman might require or he as governor might order, the same to be returned or deducted from the quota of arms to which the state might thereafter be entitled from the United States government. On June 6 Wool answered that upon examination of the law of Congress he had found that no person had authority to grant the request which had been made of him except the President of the United States; and that in a recent contest in Kansas somewhat analogous to that existing in San Francisco where a similar request had been made for

²² FARRAGUT, DAVID GLASCOE (1801-1870). Born Knoxville, Tenn. Entered the Navy at the age of nine. Became a Lieutenant in 1825, commander 1841, Captain 1855. Commander at Navy Yard Mare Island, Cal. 1855-1858; went with the North in the Civil War and became its Great Admiral. Died at Portsmouth, N. H.

²³ WOOL, JOHN ELLIS (1788-1869). Born Newburgh, N. Y. Studied law but went to War of 1812, and became a Colonel; Brig. gen. in Mexican War. Retired from army in 1862 with rank of Maj. Gen.

arms and ammunition, the President had refused to grant them. He was therefore constrained to decline granting the requisition.

On June 18, Governor Johnson appointed R. A. Thompson and Ferris Forman to ask the President of the United States for arms and ammunition and military and naval assistance to suppress what he described as an insurrection and the commission went to Washington and delivered their message. President Pierce²⁴ referred the matter to Attorney General Cushing²⁵ who replied that the case was not one calling for the interference of the Executive. And Secretary of State Marcy²⁶ wrote to the Governor that the opinion of the Attorney General constituted an insuperable objection to granting his request.

On July 26-28, two murderers, Joseph Hetherington and Philander Brace, were tried by the Executive Committee and on July 29, were hanged side by side. (See *post* pp. 117, 119.)

On August 7, Chief Justice Terry of the California Supreme Court who had been arrested and tried by the Committee for attempting to murder one of its officers and on other charges of criminal acts, was found guilty, but discharged from its custody, with the advice that he resign his judicial office. (See *post* pp. 134, 165.)

The second vigilance committee had done its work and now determined to dissolve. For three months it had been in

²⁴ PIERCE, FRANKLIN (1804-1867). Born Hillsborough, N. H. Grad. Bowdoin Coll. 1824; Admitted to bar (Amherst) 1827; Member and Speaker of House (N. H.) 1829; Member U. S. House, 1832-1836; U. S. Senator 1837-1842; Entered Mexican War and became a Brig. Gen.; President of the United States 1853-1857.

²⁵ CUSHING, CALEB (1800-1879). Born Salisbury, Mass. Grad. Harvard, 1817; member Mass. House 1825 and Senate 1827; U. S. Minister to China, 1844; Brig. Gen. in Mexican war; Judge Supreme Court, Mass. 1852; Atty. Gen. U. S. 1855; Counsel in Geneva Arbitration, 1871; Minister to Spain, 1877.

²⁶ MARCY, WILLIAM LEARNED (1786-1857). Born Southbridge, Mass. Grad. Brown Coll. 1808; Admitted to bar (Troy, N. Y.) 1810. Served in War of 1812; Justice Supreme Court, N. Y. 1829; U. S. Senator 1831; Governor of New York 1832-1838; Secretary of War, 1845; Secretary of State 1853-1857; Died Ballston Spa, N. Y.

active operation, during which time it not only retained the support originally given it but had gradually increased in strength and in the favor of the people, until its enemies even felt their maledictions upon it to be unfounded. There was no reaction, no domineering mobocracy, no attempt to seize the reins of government, no intoxication incident to possession of supreme power. A grand review and parade was held on August 18th. There were four regiments of infantry, two squadrons of cavalry, a battalion of artillery, a battalion of riflemen, a battalion of pistolmen and a police battalion. Over six thousand men were in the triumphal march. It was a day of universal rejoicing; it was the celebration of a new day of independence, a day of thanksgiving for the deliverance of the city from a reign of criminality, a day of honor to the patriots who had so nobly vindicated the integrity of the people, the conclusion of one of the grandest moral revolutions the world has ever witnessed. Nothing occurred to mar the triumph of the day. About ten o'clock martial music was heard in various quarters of the city where companies were formed in line. Members of the companies were in citizen's dress, some attention however being paid to uniformity—black pantaloons, black frock coats buttoned to the neck, white gloves and glazed or cloth caps prevailing. On the left lapel of the coat was worn a white satin badge denoting the company. Most of the officers were mounted. Bouquets adorned the muskets. The streets were crowded with spectators, flags floated from hundreds of houses and gorgeous decorations with appropriate mottoes were stretched across the streets at many points.²⁷

The leaders of the Vigilance Committee now organized the People's Party and selected a committee of twenty-one men, who had absolute power to select candidates for the various offices. Neither politics nor religion were considered. The election was on November 4, and resulted in the triumph of the Peoples' Party and from that time on, says Hittell, the Peoples' Party ruled San Francisco, and did it better than

²⁷ Bancroft (H. H.) *Popular Tribunals*.

it has ever been governed at any time before or since. The day previous, the last meeting of the Committee was held and the building closed. There were no prisoners in the County Jail or elsewhere awaiting trial. The retirement was absolutely voluntary. It arose neither from outward fear nor from inward dissension; it was hastened by no self-destroying cause or extraneous pressure. There was then no organized force opposing the committee, no danger from which immediate dissolution was the sole escape. The original and only aim of the Great Tribunal had been attained and the safety of life and property in the city was assured.²⁸

At the last meeting of the committee it was voted that as good government had been restored in San Francisco, the sentences of banishment should be rescinded. Within a year or two a number of the expatriated returned to the city, very different men from what they were before. Most of them wished only to be forgotten but a few brought actions in the court against members of the committee, asking damages, but they were unsuccessful in obtaining money compensation. These were, as well put by one Californian, the only straggling annoyances that followed the most remarkable reform ever known in this country.²⁹

²⁸ Bancroft (H. H.) *id.*

²⁹ Hittel, T. H. 649. When Cora and Casey were taken from the jail, the only homicide left was a young man of good family who had been in the employ of Wells Fargo Co. named Rodman M. Backus. He had killed a man at the solicitation of a woman of the town with whom he was infatuated. It was a case of reckless and wanton homicide without justification or excuse; but the coroner's jury returned a verdict that the killing was "done by said Backus in self-defense in order to protect his life and property from the hands of a midnight assassin". This extraordinary verdict was intended to clear Backus; but the grand jury indicted him for murder. In February he was tried; and much to the surprise of himself and particularly of his attorneys, who expected an acquittal, notwithstanding his guilt, he was convicted of manslaughter and sentenced to prison for three years and a fine of one hundred dollars.

The Supreme Court reversed the judgment, but neither he nor his attorneys were as anxious for a second trial as they had been for the first one; and he lay in jail biding his time. They, however waited too long. After the excitement occasioned by the murder of Richardson there was very little chance with such a record as

existed against him to acquit Backus. But when the murder of King took place and the Vigilance Committee commenced forming, he was in mortal terror. A proposition to withdraw his application for a new trial and accept the sentence that had been pronounced against him, he eagerly caught and it being approved by the Vigilance Committee, he was removed to the State prison and remained there until August, 1858, when he was pardoned by the Governor and soon after left the state. Hittell, II, p. 509.

THE TRIAL OF JAMES P. CASEY FOR THE
MURDER OF JAMES KING OF WILLIAM AND
THE TRIAL OF CHARLES CORA FOR THE
MURDER OF WILLIAM H. RICHARDSON,
BY THE SECOND VIGILANCE COM-
MITTEE, SAN FRANCISCO,
CALIFORNIA, 1856.

THE NARRATIVE.

James King of William¹ was one of the oldest and best known residents of San Francisco. He made a fortune as a banker but losing it in the financial panic of 1854, he went into journalism and in October 1855 began the publication of a daily newspaper, the *Bulletin*. Being everywhere regarded as a man not only of honor and integrity, but of great ability and courage, his journal soon had a large circulation and formed a rallying point, in the days of public

¹ KING, JAMES (1822-1856) (Georgetown, D. C.) His father was an Irishman named William and following a custom once common among his people in order to distinguish himself from other James Kings, he wrote his name James King of William. His younger days were associated with the post-office department and the banking house of Corcoran and Riggs in Washington. In 1848 he started for Oregon by water, partly for health and partly for trading adventures, but arrested in his voyage by the attractions of California he took up his residence at Sacramento. There he assisted in the organization of a government and also engaged in mining. In 1849 he opened a banking house in San Francisco, "James King of William & Co." but his partner withdrawing it was continued under the name "James King of William." The Financial Panic caused his failure but he kept nothing from his creditors and even refused to avail himself of the insolvent act. He next became a manager of Adams & Co. at a salary of \$1000 a month until its failure in 1855 turned him to journalism and he established the *Bulletin* being himself the chief editorial writer. After his murder an imposing monument was erected to him in Lone Mountain Cemetery and a public subscription of \$40,000 placed in trust for his family.

fraud and corruption, for the forces of law and order. In his editorials he handled the vicious elements of the city without gloves; day after day making new attacks and repeating old ones, charging fraud and corruption wherever he saw it, not hesitating to accuse judges and high officials and arraigning men of every class by their names and without fear.²

"All that class of shoulder striking, ballot-box stuffing politicians, together with gamblers, prostitutes and pimps of every shade, rich and vulgar alike, but more particularly those who had made themselves conscious in public affairs, he tore in pieces with almost savage ferocity. Likewise he scattered thorns upon the bench of criminal judges and made derelict officials drink gall. To lawyers who lived by defeating justice and to all who polluted the springs of virtue and preyed upon industry and public morals, he was a thorn in the flesh. Opposition and danger only roused him to bolder efforts. Each day his shafts were launched at some new infamy; each day his pen, like the white plume of Navarre flew along the topmost billows of the fight. Juvenal, in his denunciations of venal Rome with her refined and hypocritical people high in culture but low in morals, was not more earnest, honest or successful. Parasites of the government flaunting in the fruits of extortion, insolent Crispinus or ostentatious Matho in the hands of the scathing satirist, were not more severely rebuked. His courage was of a quality touching desperation. He acted like a man having nothing to lose. Fortune had gone and disgust had taken the place of business ambition. It was understood from the outset of his journalistic career that neither he nor his organ was for sale. It was understood that he would not fight a duel, that he feared no libel suits, though on this account he was none the less careful of his facts. Bold and resolute, his editorials often bordered on the scurrilous, but they were ever on the side of virtue and honesty."³

He refused low medical advertisements saying that what was unfit to be read by his own fireside should not be sent into the parlors of his readers, and though frequently challenged, he declined to fight a duel, giving as his reasons his duty to his family and his opposition to dueling on moral grounds, but announcing that his conscience was perfectly easy as to the right and propriety of defending himself if he should be assaulted. Frequently he was threatened by personal enemies

² Hittell (T. H.) ante.

³ Bancroft (H. H.) ante.

and political cut-throats and again and again was he warned by his friends that sooner or later his life would pay the penalty of his temerity. Yet steadily and fearlessly he continued his course, and that at a time when among the class most severely castigated, a bullet was the usual answer to an insult. His disregard of threats against his life may be seen in the way he treated them in the columns of his newspaper. On November 22 he wrote:

"Bets are now offered; we have been told that the editor of the *Bulletin* will not be in existence twenty days longer and the case of Dr. Hogan of the Vicksburg paper who was murdered by the gamblers of that place is cited as a warning. Pah! we passed unscathed through worse scenes than the present at Sutter Fort in '48. War then, is the cry, is it? War between the prostitutes and gamblers on one side and the virtuous and the respectable on the other! War to the knife and the knife to the hilt! Be it so, then! Gamblers of San Francisco, you have made your election and we are ready on our side for the issue!"

One Selover of the fraternity denied the privilege of the duel, wrote threatening darker measures on the 6th December. Mr. King said:

"Mr. Selover it is said, carries a knife. We carry a pistol. We hope neither will be required but if this rencontre cannot be avoided why will Mr. Selover persist in perilling the lives of others? We pass every afternoon about half-past four or five o'clock along Market street from Fourth to Fifth street. The road is wide and not so much frequented as those streets farther in town. If we are to be shot or cut to pieces for Heaven's sake let it be done there. Others will not be injured and in case we fall our house is but a few hundred yards beyond and the cemetery not much farther. If these fellows are really determined to attack the editor of the *Bulletin* why don't they do it at once? and be done with it. Why keep everybody in suspense? Here we have been carrying a pistol nearly three months because of the braggadocio bullying of this crowd until we are heartily tired of it. We don't want to carry weapons. If the fuss must come off, let it come at once and be over."

A few days after the murder of Richardson, he prophesied what the result of the trial would be, saying:

"We do not want to see another Vigilance Committee if possible

to be avoided. That no effort will be spared to get Cora clear begins now to be apparent. His friends are already at work. Forty thousand dollars, it is said, have already been subscribed for the purpose. Of this some five thousand dollars will be sufficient to cover the lawyers' fees and court charges and the balance can be used as occasion may require. One bad man on the jury will be sufficient to prevent an agreement. Look well to the jury! What we propose is this: If the jury which tries Cora is packed, either hang the sheriff or drive him out of town and make him resign. If Billy Mulligan lets his friend escape, hang Billy Mulligan or drive him into banishment."

On November 22 it again returned to the subject: "Hang Billy Mulligan. That's the word. If Mr. Sheriff Scannell does not remove Billy Mulligan from his present post as keeper of the county jail and Mulligan lets Cora escape, hang Billy Mulligan; and if necessary to get rid of the sheriff, hang him—hang the sheriff! Strong measures are now required to have justice done in this case of Cora. Citizens of San Francisco, what means this feeling so prevalent in our city that this dastardly assassin will escape the vengeance of the law? Heavens, what a mortification to every lover of decency and order in and out of San Francisco to think that the sheriff of this county is an ex-keeper of a gambling hell; his deputy who acts as keeper of the county-jail is the notorious Billy Mulligan and another deputy, Burns, the late 'capper' at a 'string game' table".

And on the afternoon of the day that the jury announced its disagreement, this editorial appeared in the *Bulletin*:

"Twelve o'clock, noon. 'Hung be the heavens with black.' The money of the gambler and the prostitute has succeeded and Cora has another respite. The jury cannot agree and are discharged. Will Cora be hung by the officers of the law? No. Even on this trial one of the principal witnesses against him was away, having sold out his establishment at twenty-four hundred dollars and left the state. It is said another trial cannot be had this term and by that time where will the other witnesses be? Rejoice, ye gamblers and harlots! rejoice with exceeding gladness! Assemble in your dens of infamy tonight and let the costly wine flow freely and let the welkin ring with your shouts of joy! Your triumph is great—oh, how you have triumphed. Triumphed over everything that is holy and virtuous and good; and triumphed legally—yes, legally. Your money can accomplish anything in San Francisco and now you have full permission to run riot at pleasure. Talk of safety in the law? It is a humbug. The veriest humbug in existence is the present system of jury trials. Had we had a jury of eighteen with a two-thirds vote to govern, an honest jury in this case might have agreed in one hour after leaving the jury box. Rail at the vigilance committee and call it an illegal tribunal? What scoundrel lost his life by their action who did not most

richly deserve it? Men complain of vigilance committees and say we ought to leave criminals to be dealt with by the law! Dealt with by law, indeed! How dealt with—to be allowed to escape when ninety-nine men out of a hundred believe the prisoner to be guilty of murder? Is not this very course calculated to drive an already exasperated people to madness and instead of a vigilance committee with all its care and anxiety, to give a fair trial without the technicalities of the law, to call into action the heated blood of an outraged community that rising in their might, may carry everything before them and hang the wretch without even the semblance of a trial? We want no Vigilance Committee if it can be avoided, but we do want to see the murderer punished for his crimes. If we remember rightly one article in the constitution of the Vigilance Committee was, that no lawyer could become a member! Peter the Great, when in Paris once said he had but three lawyers in his empire, and he intended hanging two of them immediately upon his return. What purpose does the law serve but to bind honest men and let loose the vile and guilty?"

Those whom he attacked and those who knew they were liable to be attacked were in constant dread and terror; and various plans were discussed as to how the newspaper might be muzzled or its influence destroyed. The only means was to get Mr. King out of the way. It was supposed that there existed a deliberate conspiracy to kill him, as silencing the *Bulletin* could not be accomplished in any other way.⁴

On May 14 the attack upon Mr. King took place. In the *Bulletin* of that afternoon he published an article against the appointment of a man named Bagley to a position in the Custom House. Bagley, he went on to say, seemed to behave himself at that time; but he had been engaged in a very disreputable election fight not long before with James P. Casey,⁵

⁴ Hittell (T. H.) ante.

⁵ On the 4th of September 1851 a convict named James Casey was discharged from the Prison of Sing Sing, New York, having completed a term of hard labor to which he was sentenced for Grand Larceny. Coming to California he displayed so much cunning and skill in political manipulations that he was soon elevated to a high position in one of the corrupt cliques which largely controlled both city and state governments. Like his *confrere* Broderick, he was a leader among the roughs; like him he joined a fire company and was elected foreman. He established the *Sunday Times* newspaper of which he was proprietor and nominal editor though too illiterate to write for the press himself. As inspector of elections of the sixth ward he easily controlled the election of the city and county

one of the supervisors of San Francisco; and it seemed plain that in that fight Bagley was the aggressor. "It does not matter," he continued, "how bad a man Casey has been, nor how much benefit it might be to the public to have him put out of the way, we cannot accord to any one citizen the right to kill him or even to beat him without justifiable provocation. The fact that Casey had been an inmate of Sing Sing prison in New York is no offense against the laws of this state: nor is the fact of his having stuffed himself through the ballot box as elected to the board of Supervisors from a district where it is said he was not even a candidate, any justification why Mr. Bagley should shoot Casey, however richly the latter may deserve having his neck stretched for such fraud on the people."

officers, for as the sixth ward went, so went the city and county. The sixth ward became famous under his management; and a desperate fight at a primary in the spring of 1855 made Casey himself famous. At the Autumn election of the same year he was returned from the Presidio district to the lucrative office of supervisor; though at the time he was not a resident of the district nor was his name mentioned on election day as a candidate. Yankee Sullivan however certified that Casey was duly elected and it must have been true, for the Irish prizefighter was judge of the election and had a good double back-action ballot-box, which no one knew how to slide but himself. During these years Casey's industry and honesty secured him a fortune of some forty-thousand dollars. He sold nominations to the highest bidder, taking money from all. He furnished judges, shoulder-strikers and stuffers on election days; he procured for a consideration the passage of fraudulent bills through the board of which he was a member. Though a good Catholic, he displayed absolute atheism in morality and honesty. He was a most worthy member of the society for the suppression of political morals; he was a just striker, a wise stuffer, a religious whisky drinker and in all his family and social relations a warm-hearted and humane villain.

Thus we see that Casey was a first-class villain, indeed a prince. Tricky fingers had woven the thread of his destiny; he was not what Californians would call mean; he would not descend to petty stealings. Among his friends he had the reputation of being highly honorable, though revengeful toward his enemies. He was much more gentlemanly and chivalrous than many an honest man. He returned good for good which is more than can be said of some; he had been taught from childhood to right his own wrongs. Bancroft (H. H.)

That evening about five Mr. King left his office to walk home. Casey suddenly stepped from behind an express wagon, presented a large navy revolver at his breast and fired, giving Mr. King no chance or time to defend himself. Though he lingered for some days, he had received a mortal wound; the purposes of Casey and his co-conspirators and the desires of all of Mr. King's enemies had been accomplished. His voice was silenced for ever.

The assassination caused a tremendous sensation, bulletins of the condition of the sufferer were issued hourly, the whole city took on an aspect of grief, equalled only since that time by the anxiety of the people in the cases of Lincoln, Garfield and McKinley.⁶ When on the afternoon of May 20 it was announced that he had breathed his last, it fell upon the city like a pall. Business of all kinds ceased; stores and offices were closed and the public and mercantile buildings and many private residences were draped in black and flags at half mast were everywhere. Stretched from the *Bulletin* office to Montgomery block was a funeral device of the Howard Fire Company bearing the inscription, "The great, the good is dead, who would not mourn his loss?" Another with the motto,

⁶ Atherton (G.) ante. The feeling was shown in the editorials the next morning in the public press. One of them for example said: "The work of the assassin is completed—James King is dead. The pulsations of his manly heart are stilled forever. No more in our streets will his towering form be seen to walk. No more the energies of his able pen will please the gaze of thousands of readers. Death has taken him from us. Not the death which, in withered age, comes like an angel of mercy to receive the waiting, lingering soul, with hope and healing on his wings, to bear the weary wanderer to a better world; but unnatural, unkind death, in the prime of life's youth, in the flush of health, in the freshness and animation of early manhood; with happy memories of the past, and buoyant hopes for the future to urge him on, and make him wish to live; with a wife and children clinging around him, as the green ivy on the broken oak, for support. So has he gone from us, stricken down by the hands of a brute. The golden bowl is broken. The wife, whose young heart and hopes were pledged to him, is stricken and bereaved. The children who have fondly listened with her for the coming of his footsteps, as he sought the family hearthstone, will hear him no more. Widowed is she, and they are orphans."

"A martyr to principle; we mourn thy loss," was raised at the corporation yard. On the arm of almost every man that walked the street was a badge of mourning. His body was laid in state and for six hours a continuous stream of people passed by to view it. His funeral was an imposing cortege that left the Unitarian church after the services. The Masons, Royal Arch Chapter in full regalia, led the procession. Following four abreast were the officiating clergymen and surgeons; then came the hearse drawn by four white horses and attended by fourteen pall-bearers, ten coaches filled with the family and friends and the men employed on the *Bulletin*; then the Society of California Pioneers in regalia, members of the press, Sacramento Guards in uniform, San Francisco Fire department, St. Mary's Library Association, three hundred and twenty draymen on horseback, the Stevedores' Association, and other Societies and Associations, a delegation of colored men and forty carriages of citizens. The procession was a mile long and was accompanied most of the distance by practically the remainder of the decent population of the city.⁷

Casey, as has been seen, narrowly escaped lynching, took refuge in the County jail from which he was taken along with Cora by the Vigilance Committee, (*ante* p. 72) and no sooner were they secure in the Vigilance Committee Cells than arrangements were made for their trial which began on May 20. The Executive Committee conducted it, William T. Coleman presiding. There were no twelve men in the box, for the whole Executive Committee constituted the jury. The prisoners were told to select their counsel from among the members. They asked for lawyers other than members of the tribunal but were informed that no outside counsel, any more than an outside judge, would be tolerated. The men who sat there as judges had most of them the opinion that to the lawyers' society was indebted for at least half the ills arising from uncaged criminals and maladministration of the laws and they determined that lawyers should have nothing to do

⁷ Atherton (G.) *ante*.

with their trials. What they wanted was justice, not fustian. If that was law, well; if not, so much the worse for the law. And the right they could determine without the aid of learned judge or statute-book.⁸

But every step was taken to give them a full and impartial trial. Neither of the culprits attempted to deny the slaughter of his victim, but sought to excuse the act—Cora upon the plea that he had been assured that Richardson was a vindictive man and he feared his own life would be forfeited if he permitted him to live, and Casey on the ground that he had given King time enough to draw and fire if he desired. He acknowledged that he had served a term in the New York prison under sentence for burglary but had determined to prevent the publication of the fact in California.

Both were found guilty and the verdict was approved by the full Committee. They were sentenced to be hanged in front of the Vigilance Headquarters on May 22 while the funeral cortege of James King of William was moving through the streets. Arabella Ryan was permitted to be married to Cora in his cell and at half-past-one the two miscreants were executed in the presence of a great multitude.

THE TRIAL.⁹

Before the Second Vigilance Committee, San Francisco, California, May, 1856.

WILLIAM T. COLEMAN, *President.*

May 20.

James P. Casey who had been indicted by the Grand Jury for the shooting of James King of William, along with Peter Wightman and Edward McGowan as accessories, and Charles Cora who had been indicted and tried (the jury disagreeing) for the murder of General William H. Richardson, and both of whom had been removed from the County jail by the Committee of Vigilance and confined in the cells of the Vigilance

⁸ Bancroft (H. H.) ante.

⁹ Bibliography, See *ante* p. 19.

Headquarters were brought before the Executive Committee today for trial.

It had been previously ordered that a committee of surveillance consisting of Messrs. Dempster, Burns and Jessup be appointed as guard over the prisoners; and ordered that all communications and business connected with the prisoners pass through their hands for inspection and consideration. They alone to hold intercourse with the prisoners; they to have access to the records of the committee on evidence and empowered to communicate with any persons in this connection with whom they saw fit to do so. During the trial of a prisoner none to be admitted to the Executive rooms except the Marshal, the accused and his witnesses. The tribunal in a body took the following oath: "We hereby pledge our sacred honor to God and to each other not to divulge the votes taken in our verdicts rendered in the trials of Cora and Casey to any living being outside these rooms, so help us God."

PRESIDENT COLEMAN: James P. Casey, you are here on trial for your assault on James King of William, shooting him on the street without warning and giving him a wound that his physicians say is a mortal one. What have you to say?

Casey: I am not guilty. I am an ex-convict from New York but Mr. King had no right to rake that up against me. I did not fire without warning; I told him to defend himself and gave him plenty of time. I knew he always went armed. And cannot I have my lawyers to defend me?

PRESIDENT COLEMAN: No not here. But you may chose any of the gentlemen you see before you and they will see that you get justice.

Casey: Then I will ask for Mr. Truett.

PRESIDENT COLEMAN: Charles Cora, you are now on trial for your life, accused with the murder of United States Marshal Richardson.

Cora: Do I get no counsel?

PRESIDENT COLEMAN: Counsel will be given you.

Cora: I want my own lawyers, not the men here. I want people that are impartial. I am not guilty of murder. I had been told again and again that Marshal Richardson was a dangerous man and I did what I did to save my own life.

PRESIDENT COLEMAN: We allow no lawyers here but we

promise you that you shall get justice; all of our members are impartial.

Cora: If Mr. Truett will act for me, I beg you earnestly, gentlemen, that the excitement of the time may not be prejudicial to my interests, that I may have a fair chance for my life.

PRESIDENT COLEMAN: Your trial will be fair.

Mr. Truett: I shall undertake the defense and petition that Mr. Smiley be appointed my assistant.

PRESIDENT COLEMAN: That shall be done and Mr. John P. Manrow will prosecute both cases. Gentlemen of the Executive Committee, I have just received a letter addressed to you. It is from George F. James, one of Cora's attorneys on his trial in the Court. He says that he had been credibly informed that James P. Casey and Charles Cora, both clients of his, were in your custody; that he was desirous of seeing whether they wished to hold any further communication with him and that if so you would confer a favor by admitting him to an interview with them.

THE EXECUTIVE COMMITTEE authorized the President to make reply that the prisoners did not require his services.

John P. Manrow, for the Prosecution: *Miers F. Truett*¹⁰ and *T. J. L. Smiley*¹¹, for the Prisoners.

¹⁰ "Truett and Truett were among the leading merchants of the city in wealth, position and trade; they were not exactly brothers Cheeryble; Miers F. Truett was vigilance and H. B. Truett rather inclined toward law and order. The former was somewhat southern in his proclivities, the latter northern; the former did not recognize the duello, the latter did. Mr. Truett, by which designation Miers F. Truett is always meant, was at one time the best business man on Front street. He was afraid of nothing, a man of iron, morally and physically. Two heavy muscular teamsters were one day fighting on the street when Truett came along and seizing each by the collar held them off at arm's length, as the school-master separates pugilistic pupils. * * * Mr. Truett's enthusiasm partook of the chivalrous, and the depth of feeling evinced when the defence of a human life was placed in his hands speaks louder than words the praise of his honesty and humanity." Bancroft, II-127.

¹¹ "Tall, strong, straight as a pine with a piercing black eye and a pronounced manner, Thomas J. L. Smiley was as active as he was

Mr. Manrow stated the circumstances leading to the attack on Mr. King. It seemed that a communication appeared in the *Sunday Times*, over an anonymous signature, which reflected upon the character of Mr. King and his brother; the latter being an attache of the Custom House. It charged upon James King of William that he had avoided to censure Collector Latham, for his official conduct, in consequence of his brother being an appointee of that officer; and that the brother was an applicant for the position of U. S. Marshal, to fill the vacancy of Gen. Richardson; that his failure to obtain it was the reason Mr. King had so violently opposed the appointment of McDuffie. The substance of this was denied by Mr. King and his friends, but nothing concerning the matter was published until in the *Bulletin* of May 14, the following appeared:

Among the names mentioned by "A Purifier," in his communication of Friday last, as objectionable appointments of the Custom House, was that of Mr. Bagley, who has since called on us, and by whose request we have made more particular inquiries into the charges made against him. On Monday we told Mr. Bagley that we could not feel justified in withdrawing the general charge

bold and successful. During the last month of the organization, particularly after having been elected vice-president, he proved a fine executive officer and was of great service to the association up to its close. Mr. Smiley was one of the few who began at the beginning and continued to the end; who promptly responded to the first tap of the bell on the night of the 10th of June, 1851 and continued to grow in efficiency and influence up to the final demonstration, the 18th of August 1856. He was on the war committee part of the time and in the grandest achievement of the crusade; he was second to none in activity and bravery. Scouring the town at the head of a chosen company, hunting the enemy in their retreat, seizing and bringing them to head-quarters when found, he felt like one in battle, he said, all thought of danger being lost in the courage of animal excitement. In his dealings with prisoners he was always on the side of kindness when kindness did not interfere with duty. 'Tom Smiley,' says a member of the Executive, 'was very influential, very active and useful, though not of very good judgment.' And again, 'Smiley, I don't think had a well balanced mind; talked a great deal, was very excitable, but ready and prompt to carry out any measure the Committee thought necessary.' The opinions of strong-minded, independent, brusque associates, however, when expressed of each other, should always be taken with allowance," Bancroft II-130.

against him; for though in the particular cases mentioned we had not been satisfied that he was a party at fault, yet the general character we had heard was against him. To this Mr. Bagley urged that our informants were all enemies to him, which, in one sense of the word, is true, though they are not the persons he supposes them to be. At our last interview with Mr. Bagley we told him that if he could bring some respectable persons, known to us, who would vouch for him, and explain away what has been told to us we would take pleasure in saying as much in our paper. Several such have called on us, but whilst they were unanimous in saying that Mr. Bagley behaves himself very well at present, yet, when we ask them, for instance about the fight with Casey, they cannot explain satisfactorily. Our impression at that time was, that in the Casey fight, Bagley was the aggressor.

It does not matter how bad a man Casey has been, nor how much benefit it might be to the public to have him out of the way, we cannot accord to any one citizen the right to kill him, or even beat him, without justifiable personal provocation.

The fact that Casey has been an inmate of Sing Sing prison in New York, is no offense against the laws of this State; nor is the fact of his having stuffed himself through the ballot-box as elected to the Board of Supervisors, from a district where it is said he was not even a candidate, any justification why Mr. Bagley should shoot Casey, however richly the latter may deserve having his neck stretched for such fraud on the people.

These are acts against the public good, not against Mr. Bagley in particular; and however much we may detest Mr. Casey's former character, or be convinced of the shallowness of his promises to reform, we cannot justify the assumption by Mr. Bagley to take upon himself the redressing of these wrongs.

This case of Bagley's has caused us much anxiety, and we should have been pleased to have withdrawn, cheerfully, his name from the list alluded to, but we cannot conscientiously do more than express our gratification at the assurance we get of his present conduct, in which we trust he will persevere. As to the Casey fight, we suggest to Mr. Bagley, if he can explain that away, it would not be amiss to do so, and he can have the use of our columns for that purpose.

This article so provoked Casey in the hatred he already bore Mr. King, that he took his life.

*Charles Doane*¹² (Chief Marshal). Mr. President: I am instructed to announce that James King of William is dead.

¹² "In all the Committee there was no man better fitted to his place than Marshal Doane the central figure of the military. And I doubt if in the annals of human warfare an example can be found of a civilian unexpectedly called to general three thousand unexpectedly called civilians with such a showing as that of the

THE EVIDENCE.

(Trial of Casey.)

Two employes of the Bulletin testified that on the afternoon of May 14 they were in a room next to Mr. King's office; the door was open and they could see and hear what was going on. Mr. King was seated at his table writing, about 4 o'clock Casey came into his room. He seemed excited and out of breath.

"What do you mean by that article?" he demanded. "What article?" asked King. "That which says I was formerly an inmate of Sing Sing prison." "Is not that true?" "That is not the question. I don't wish my past acts raked up. On that point I am sensitive." "Have you done?" asked Mr. King. "There is the door; go! never show your face here again!" Casey moved toward the door which was open. There he burst out again: "I'll say in my paper what I please." "You have a perfect right to do so," returned

King; "I shall never notice your paper." Striking his breast with his hand Casey cried, "If necessary I shall defend myself." "Go" exclaimed Mr. King, rising from his seat. Casey immediately went down the stairs. Mr. King left his office a few minutes after five to walk home; he wore a short cloth cloak and generally buttoned it or held it together in front with his hands, so that it covered his arms.

James Brown: Was in the Bank Exchange saloon that afternoon about four when Casey came in and had a drink with Judge McGowan and several of us; said he had just seen King who had apologized to him. But we thought he was bluffing. "All this talk is very well" said the Judge, "but I see through it. What are you going to do about it?" "I'll get even with the —, don't you worry about that," said Casey.

Sunday next after the assassination. It was this quickness of perception and adaptability of resources to necessity, the instantaneous and intuitive knowledge of cure, absorbed as it were from the disease itself, that claims our highest admiration throughout this entire movement, and in these respects none can claim higher distinction than Marshal Doane. * * * Unfortunately during the latter part of the campaign this marvellous organizer and truly worthy and efficient man lost that singleness of purpose which was the charm and sanctification of the movement; became selfish and sought to prostitute his good work and position in the committee for personal advantage. In a word he sold himself, his popularity, his good name for office. He was elected sheriff of the city and county of San Francisco, though not until after the disbandment of the Committee and he made an excellent officer. This in itself was not so heinous an offence, had he not thought of it while in the committee and there prostituted himself, his strength and influence to politics." Bancroft II-132.

McGowan asked, "Are you armed?" "No." "That little weapon is too uncertain. Take this." He passed to Casey a big "navy" revolver. "You can hide it under your cloak—so. Listen: King comes by here every evening. Everybody knows that and everybody knows what has happened."

Casey took another drink by himself and then left; he had his right hand under his long cloak; McGowan followed him in a few minutes.

General Estell: I saw the shooting from the opposite corner; Mr. King was crossing the street when Casey met him there; did not see any weapon in Mr. King's hand; heard Casey say, "are you armed?" but heard no reply; then saw Casey draw a large navy revolver from his cloak and saying "draw and defend yourself," he fired. He seemed to take deliberate aim; he cocked the weapon again but as King immediately ran into the Express office he did not fire again.

Charles Peerce: Saw the shooting; Mr. King was crossing Washington Street, towards the Express office; when near the middle of the street Casey stepped up and called out "draw and defend yourself." King advanced towards Casey but I did not see him make any motion to draw a weapon: Casey threw off his cloak and putting a big navy revolver at King's breast fired. King put his right hand to his left breast and saying, "I am shot," staggered into the Express office.

Andrew Hepburn: Peter Wightman, a friend of Casey's and Lafayette Burne, deputy-sheriff seized Casey, protected

him from the fury of the people and led him away to the jail for shelter. I was in the crowd that saw the shooting. McGowan came up some time before and stood leaning against a store; he sent a small boy with a message for Pete Wightman, the deputy Sheriff; Wightman came up in a little while; about 5 I saw King turn the corner of Merchant street into Montgomery; his head was bent; he walked to the corner of the Banker's Exchange. When nearly at that point he turned to cross the street diagonally. At the same instant Casey stepped from behind the express wagon and fired.

Lafayette Byrne: Was in conversation with one McGrotty just before the murder. "There is some shooting to come off" remarked McGrotty. "Yes?" I said, "between whom?" "King and Casey" answered McGrotty.

Robert Somerville: Was on the corner of Montgomery street on Wednesday last on the sidewalk in front of the bank Exchange; saw James King of William crossing leisurely with his head down, from the place where I stood toward the Metropolitan saloon. Saw Mr. Casey step out from behind a wagon standing in front of Phil's saloon. He walked quickly and a little carelessly and in a manner not calculated to arrest the attention of Mr. King until within fifteen paces of him when he suddenly stopped, threw off his cloak, presented a pistol and fired at Mr. King at the same time saying something which I could not hear. Mr. King did not appear to be fully aware of the presence of Mr. Casey until

he received the ball. Mr. King then turned toward me, uttered an exclamation and walked toward the door of the Pacific Express office where he staggered in. Casey moved a few feet sidewise or forward, turned and picked up his cloak and walked to the corner of Washington Street, where he was joined by two men, one of whom was Pete Wightman. They walked up Washington street toward the station-house, when I saw no more of them. About ten minutes previous to this, was standing in the Bank Exchange. Two men were drinking at the bar, one was Pete Wightman. They were suddenly interrupted by a boy named John Butts who hastily entered and whispered to them when they at once dropped their glasses and turned upon him. "Who told you so?" in one breath they both exclaimed. "Casey" replied the boy. They instantly left the room. I looked after them and saw Casey standing on the outside on Washington street, near the door where they passed out. I turned and made a remark to a gentleman that something was wrong. The gentleman replied that Casey had been in a moment before and handed Pete Wightman a pistol. This induced me to look after them and upon going out I saw Wightman standing in front of the *Bulletin* office. I passed up Clay street where I saw Casey standing on the corner of Clay and Montgomery streets. Then turned towards the Bank Exchange and passed Mr. King who was conversing with Mr. Kingsbury on Duncan's corner. I looked back toward Mr. King

and saw that Pete had changed his position; he had approached nearer Mr. King and was standing and apparently watching him. A moment after this Mr. King left Mr. Kingsbury and approached me when I saw Pete closely following Mr. King. Mr. Casey probably passed on the other side as he had plenty of time to do so leisurely. Saw Wightman after this and he had hold of Mr. Casey. At the time these events were taking place the shooting occurred. All the circumstances I have related occupied about ten minutes.

John Jones: I arrived at the scene just after the shot was fired; saw Mr. King disappear in the Express office. A man caught hold of him and said, "Give up your arms." Casey refused and showed fight. Several officers about that time approached, when Casey remarked, "I will go with them but they must not take away my arms. I am not going to be hung." He was quickly run off to the Station-house by his friends and locked up. The street by this time was filled with a wildly excited populace, running in every direction, crying, "Where is he? Hang him. Run him up to the first lamp-post." When it became known that Casey was at the Station-house a rush was made by the crowd toward the City Hall with cries of "Hang him! Take him out, he will get clear if the officers keep him." The crowd separated, half going up Merchant and the other up Washington streets to the Station-house, which they found strongly guarded and barricaded by officers; the outside iron doors

leading to the halls were closed. I was in the crowd that went to the jail; before that saw many people trying to get into the Express office; everybody wanted to find out how badly Mr. King was hurt. The people were shouting, "Let's organize and hang him; hang all the gamblers." Saw them take Casey in a carriage to the County jail. The mayor came out and made a speech and the crowd hissed him. Heard shouts of, "Look at poor Richardson", "Where is Cora?" "Let's hang him," "Down on such justice." The people threw bricks at the officers who tried to arrest some one. When the military came up the crowd began to leave; I staid there until near three o'clock; was one of the last to leave.

Doctors Gray, Cole, Harris, Nuttall, Hammond, Toland and Bertody testified that they were summoned to the Express office and that when they arrived Mr. King was stretched in a chair. A bed was at once procured and an examination made. It was found that the ball had entered the left breast just above the nipple and come out behind under the left shoulder blade. The wound bled profusely and was very painful. Very soon, through the shock and loss of blood, his extremities became cold but by hot applications warmth was restored. After the wound was dressed and bandaged anaesthetics were given and he slept for several hours. He was in a critical condition and there was small hope for his recovery. His wife arrived about seven. Ropes were stretched across the street

to keep the people away who were noisy. There must have been at least ten-thousand there before they started for the jail. Next day he was taken on a litter to his home. Friday night he seemed better and on Saturday there were hopes for his recovery, but Sunday night there was a change for the worse. He complained of great pain from the wound and in his left shoulder. Monday morning his countenance wore an anxious expression; his system was in great distress with the pulse at 130. His physicians held a consultation, after administering chloroform and the wound examined. It was found that the large artery had not given away, not rendering it necessary to take it up; little or no blood flowed. The wound was dressed again and upon his recovery from the chloroform he was made comfortable and easy and continued so until nightfall. During the evening he became restless and continued to be so during the night. Late in the night the pulse entirely ceased in the left arm and grew feeble in the right. About dawn he fell into a disturbed sleep. Shortly before five, Tuesday morning (20th) he complained of sickness of the stomach which the doctors were unable to relieve. He soon began vomiting and was unable to retain anything on his stomach. This continued until half-past one o'clock when he breathed his last.

On Saturday he made a statement, in anticipation of death, to those around his bedside. He said that a few minutes before five o'clock he left his office, as

usual, for dinner. He walked on the pavement in front of Montgomery Block, going northward. At the Bank exchange he crossed the street diagonally towards the Pacific Express Co.'s office. Being told by his wife that the morning papers differed in their accounts of the attack, one asserting that Casey said, "Draw and defend yourself," another that Casey said, "Are you armed? I am going to shoot you" at the same time firing, Mr. King said he did not hear any such words nor had he the least notice to defend himself. He heard a noise like a person crying, "Come on" or something like that and at the very instant saw a pistol

pointed at his breast, which was fired. The "come on" and the firing were as closely simultaneous as could be.

(Trial of Cora.)

Nearly every witness who had testified for the prosecution in the trial in the Criminal Court was summoned, and appeared and gave similar testimony to what they had given there. But though at the beginning of the trial Cora had handed to the Marshal a list of his witnesses and though they had been diligently sought by him and by a sub-committee assisting him, not one could be found. They were all in hiding or had left the city.

Mr. Manrow, Mr. Truett and Mr. Smiley addressed the Tribunal and **PRESIDENT COLEMAN** delivered his charge.

The prisoners were ordered to be removed by the Marshal. It was ordered that the executive committee were to render their decision by ballot, that a majority could convict and that the verdict should thereupon be declared unanimous and so presented to the general committee as a unanimous vote of the executive body. Every member was to put his name to his vote.

May 21.

THE COMMITTEE sat nearly through the night considering their verdicts. This morning it rendered its verdict of guilty in both cases with sentence of death by hanging. A meeting of the General Committee was then called; it met immediately, affirmed the verdict and sentence and ordered the Executive Committee to fix the time and place of execution.

THE EXECUTIVE COMMITTEE ordered the executions to take place on May 22, between twelve and two o'clock in front of the windows of the Vigilance headquarters. The prisoners' counsel were asked to notify them and that any request to see a legal or spiritual adviser would be complied with.

The *Sheriff* of the County and a deputy presented themselves at the door with a writ of *habeas corpus* issued from the District Court for the person of Casey.¹³

¹³One hour before his execution, Arabella Ryan appeared and Cora and she were married by Father Michael Accoliti, absolution having been refused him until the ceremony was performed.

THE EXECUTIVE COMMITTEE made answer that they had performed their duty strictly according to law and that was the only reply they had to make to the writ.

THE EXECUTIONS.

May 22.

Before noon today notwithstanding the large attendance at the funeral of Mr. King, thousands of people surrounded the Committee Rooms. The Vigilance military lined the streets and armed men covered the roofs of the adjoining buildings. A platform was extended from each of two front windows of the second floor; these platforms were provided with hinges at the outer line of the window sills, the extreme ends of the platforms being held up by cords, which were fastened to a beam projecting from the roof. The rope was suspended from this beam. At one o'clock the prisoners were brought to the windows, when they looked out upon the vast multitude. They were dressed in their usual costumes but had their arms pinioned. They walked on the platform each accompanied by a priest.

An opportunity was given them to speak to the people. Casey said:

Gentlemen; I hope this will be forever engraved on your minds, and on your hearts. I am no murderer. Let no man call me a murderer, or an assassin. Let not the community pronounce me a murderer. Let not the *Alta*, the *Chronicle* or the *Globe*, which papers have so bitterly denounced me; let them not stigmatize me a murderer in their daily and weekly papers, nor send my name to the States as a murderer. Let no editor dare slander my name or my memory. Gentlemen, I am no murderer. My faults are the result of my early education. When I was reared, I was taught to fight; and to resent wrong was my province. If you see my funeral train to-morrow, let no one say there goes the body of a murderer. When I am departed hence, let no one send my name to the world as a murderer. I have an aged mother, and let not her hear me called a murderer or an assassin. I have always resented wrong, and I have done it now. Oh! my poor mother, my poor mother! How her heart will bleed at this news! It is her pain I feel now. This will wring her heart but she will not believe me a murderer. I but resented an injury—my poor mother. Oh! my mother, God bless you. Gentleman, I pardon you, as I hope God will forgive me, amen. Oh! my poor mother! Oh God, have mercy on me. My Jesus, take care of me. Oh God, with accumulated guilt of 28 or 29 years, have mercy on me.

Casey's private papers were taken charge of at his request by Charles Gallagher and he wrote a long letter to his mother in New York. The spiritual advisers of both men had been admitted immediately after their conviction and Archbishop Alemany spent many hours with them.

At the conclusion he seemed to grow weak and was unable to stand without the support of those near him. His spiritual adviser several times told him to stop speaking and pray. When the noose was placed around his neck he almost fainted and had to be supported.

Cora did not say a word or desire to. He stood upon the scaffold during Casey's speech, unmoved and when the rope was put around his neck he appeared unconcerned. At twenty minutes past one the signal was given and the cord which held up the outer ends of the scaffold was cut from the roof of the building. Both expired without any struggle. A perfect stillness and silence was observed by the vast multitude, many of them uncovered their heads. The bodies were allowed to hang fifty minutes, when they were cut down and delivered to the coroner who held an inquest. That of Casey was then handed over to the Crescent Engine company, of which he had been foreman; and on the succeeding Sunday it was buried by that company accompanied by friends and others opposed to the Vigilance Committee, in the old grave yard attached to the Mission Dolores church. That of Cora was given to his widow and it was buried by her in the same cemetery but with less ostentation. Over both elaborate stone monuments were erected—that of Cora merely giving his name and the time of his death; that of Casey with the emblems of the fire company, a declaration that he had been murdered by the Vigilance Committee and a prayer that God would forgive his persecutors.

THE TRIAL OF JOSEPH HETHERINGTON FOR
THE MURDER OF DR. ANDREW RANDALL
AND THE TRIAL OF PHILANDER BRACE
FOR THE MURDER OF JOSEPH B. WEST,
AND OTHER CRIMES BEFORE THE
SECOND VIGILANCE COMMITTEE,
SAN FRANCISCO, CAL., 1856.

THE NARRATIVE.

Hetherington¹ was a gambler who had acquired quite a fortune, but on July 24 a dispute with a debtor at a hotel in the city ended in his killing him with his pistol. On July 26 his victim died. The Committee at once took charge of him. On his trial it was found that three years before he had been tried for another murder, but like every other manslayer in those days who had money he was acquitted. The Committee made short work of him. On the afternoon of the day his victim died his trial began and three days later he was hanged on the same scaffold with Brace.

Brace² was one of the worst of the San Francisco toughs. Young in years, he was hardened in crime of every description, and boasted of his many evil deeds; he was a thief, a foot-pad and a murderer. He had in various ways managed to escape punishment for his misdeeds, but on June 3 the

¹Hetherington was of English birth, aged about thirty-five, unmarried and had come to California in 1849 or 1850. He had lived in St. Louis and New Orleans, was of a sporting character and had accumulated considerable wealth. Some years before he had been a monte-dealer. He left his affairs in the hands of F. M. and H. Haight of St. Louis and San Francisco who had been his lawyers. (See 6 Am. St. Tr. p. 867.)

²Brace was a native of New York, was not over twenty-one, large and stout of frame, apparently well educated and very intelligent, but versed in all sorts of crime. He boasted of them; said he was a great thief and stole because he could not help it.

Committee found him in the county jail under a sentence of 30 days for larceny. Hearing of the new Tribunal and of its inquiries about him he made his escape and he was not captured for some time. But when it did lay hands on him there was no delay; his trial began on July 27; he was sentenced on the morning of July 29 and on the afternoon of that day was hanged. He showed no penitence for his crimes or dread of his end, but his brief time from his sentence was spent in curses and obscenity which he kept up until he was choked by the rope of the hangman.

THE TRIAL.

Before the Second Vigilance Committee, San Francisco, California, 1856.

WILLIAM T. COLEMAN, *President.*

July 26.

This evening, Joseph Hetherington was placed on trial for the murder of Dr. Randall, on the afternoon of July 24, at the St. Nicholas Hotel. *Jules David* for the Prosecution; *J. T. L. Smiley* for the Defense.

Mr. David read the indictment charging him with the murder. He pleaded *not guilty*, saying that he shot Randall but that it was an affair he could not avoid; his life was in danger and he shot to save it, as the Doctor drew first and fired first.

THE EVIDENCE.

A large number of witnesses were examined and the evidence in brief was as follows: On August 1, 1853 he had a dispute with Dr. John Baldwin about a lot of ground on Greenwich street; and upon going to the place and finding Baldwin in possession and putting up a fence he had shot him down and killed him. He had been tried for that murder; but acquitted. Afterwards he became a creditor to a considerable amount of Dr. Randall, a native of Rhode Island, about thirty-seven years of age, who had large landed interests

in Marin county; and as Randall could or would not pay immediately, Hetherington undertook to force payment by hounding him on every occasion with insults and threats to shoot. On the day in question about half-past three o'clock in the afternoon, Randall went into the office of the St. Nicholas hotel and was followed by Hetherington. Randall stepped up to the counter, placed his name upon the register and was looking over some letters which the clerk had handed him, when Hetherington stepped up, seized Randall by the beard which was exceedingly long, and violently jerked him

five or six feet from where he had been standing, at the same time exclaiming, "Damn you, I've got you now," or something to that effect. As he did so Randall, who was said to have armed himself because he was afraid of an attack at any time, drew his pistol; but apparently at the same instant Hetherington also drew, and both fired. There were a number of persons sitting or standing in the room, who immediately sought safety from random shots, but before they could get far, each party had

made a second shot. As it happened however neither took effect either on the adversary or anybody else. By this time Randall had got around the end of the counter and was crouching behind it by the side of the frightened clerk when Hetherington ran up in front, reached over the counter with his pistol and shot Randall in the left temple. The wound thus inflicted was a mortal one and rendered Randall unconscious in which condition he continued until his death on Saturday morning, July 26.

July 27. (Sunday)

The evidence was closed today. At half-past five o'clock, after speeches by counsel, a verdict of guilty was rendered and he was sentenced to death by hanging, at such a time as should be determined by the Executive Committee. Two hours afterwards the Board of Delegates met and approved the verdict.

July 27.

The trial of Philander Brace began today. He was charged first with robbery of Willet Southwick, the year previous; second with shooting and robbing of H. C. M. Scharff; third, with murder of Joseph B. West, a policeman, in June, 1855. To all these charges Brace pleaded not guilty.

*Clancy J. Dempster*³ for the Prosecution; *Henry M. Hale* for the prisoner.

A number of witnesses were examined.

³"Next to Mr. Coleman stood Clancey J. Dempster, in some respects the most remarkable man of the movement. A New Yorker, son of a distinguished clergyman, a portion of his life was spent at Buenos Ayres where his father had charge of the Protestant missionary station; thence to a business house in Baltimore and in 1849 to California to meet and be made a partner by D. L. Ross because of his business ability. From his father he seems to have inherited an evenly balanced, logical mind, untiring and persistent energy and no small degree of literary talent, with a love of the simple habits of a plain, domestic home; from his mother, a noble, Christian woman of good Scotch Presbyterian stock, a sweet amiability of temper and unselfish devotion to principle. Small of

July 28.

THE COMMITTEE found the prisoner guilty on the first charge, not guilty on the second and guilty as an accessory on the third. He was sentenced to be hanged. In the evening the verdict was confirmed by the full Committee and that the execution should take place the next day. Brace and Hetherington were brought in together the next morning.

MR. COLEMAN: Philander Brace, stand up. Have you aught to say why sentence of death should not be pronounced against you?

BRACE: No, except that I am innocent.

MR. COLEMAN: You have been found guilty by the Committee of Vigilance of the crime of aiding and abetting in the murder of J. B. West on Sunday, June 3, 1855 and you are now sentenced to be hanged by the neck until you are

stature, of light complexion with a mild blue eye, and gentle mein, he is the last person even a close observer would select for an inquisitor or pronounce the most unswerving of a band of stranglers. In 1856 he was 28 but little more than boy in years, yet a Nestor in wisdom with marked genius in certain directions. Light a candle and search the city diligently and you will find no other such man. He was the moral ideal of vigilance as compared with Coleman, who was the physical. He was the delicate spring that held and regulated, while the latter was the swift and powerful engine that drove the machinery. Call it a reformation and he was the Melancthon of Coleman's Luther; a revolution and he was the Franklin of Coleman's Hancock. Both will expend themselves to a great principle for the public good; and while the actuating motive of the one is noble the other is absolutely pure. * * * Close, methodical, painstaking and industrious in business, thorough and conscientious in all things. Under provocation he was restrained, always preferring persuasion to force, considerate of others, though firm, persistent and fearless in maintaining the right. Genial, charitable, companionable, he is ever on the watch to serve and make others happy. * * * By instinct and education he was conservative. Tradition had done more for him perhaps than for any of his associates. Though of Scotch, puritan stock he retained his principles, thanks to California, in a great measure free from puritan prejudices. * * * Difficulties seemed only to nerve him to greater effort and danger, to inspire him with greater courage. He was of all others a man for emergencies, for it was then alone he gave full rein to his resources. The strength as well as the beauty of his character lay in the marvelous blending of modest demeanor with unflinching courage, of mildness of speech, with force

dead, and this sentence will be carried into effect at, or about, four o'clock p. m. of this day, Tuesday. And may the Lord have mercy on your soul.

BRACE (sneeringly): Is that all?

THE PRESIDENT: That is all.

BRACE: Then I am ready.

THE PRESIDENT: Joseph Hetherington, have you anything to say why sentence of death should not be passed upon you for the murder of Dr. Randall?

HETHERINGTON: I don't know that I have at present. Shall I have the privilege of seeing my attorney?

THE PRESIDENT: Yes. Do you wish to see a minister?

of will and of that steadfast earnestness which neither discouragement could daunt nor success intoxicate. His deep, quiet enthusiasm bordered on the sublime. So unselfish was it that although able to fill the highest position, he was content with any; although keenly alive to the faults and failures of his associates, there was nothing captious, fault finding or unkind in his criticisms. To shirk responsibility, to withhold time, thought or money when the cause demanded it, were as unknown to him as obtrusiveness, vanity or affectation. In his intercourse with his associates, no less than with his antagonists, he was the personification of discretion. His silence was often more powerful than the most ponderous or persuasive words of another. Positive in opinions, unflinching in the performance of what he deemed his duty and as unyielding to threats as cast iron to the blows of a lady's fan, there was latent within him a power beyond that of the most noisy demonstration of unloosed, riotous forces. * * * He was by far the deepest thinker of them all. Though elegant to preciseness in his literary composition, he was as ready to display his own weaknesses as the kindly Horace or the latter's great imitator, Thackeray. Dempster was chairman of the committee on constitution and by-laws; and the able address of the executive to the general committee on the final disbandment was written chiefly by him, Mr. Smiley lending valuable assistance. * * * No man had clearer or more direct conceptions of the rights and duties of citizens of a commonwealth to themselves and to each other; and it was when aroused by a sense of wrong committed that he was strongest, most positive and most efficient. Then the absence of physical vigor was lost sight of and his companions saw and society felt only the mightiness of his mind. Day by day as fresh duties were laid upon him he grew; his labors, except in physical application, fertilizing his abilities." Bancroft II-121.

Mr. Dempster was not appointed prosecutor until Samuel T. Thompson and Jules David had declined.

HETHERINGTON: I wish to see a minister but I would rather see H. H. Haight first.

THE EXECUTIONS.

July 29.

A gallows had been erected on Davis Street between Sacramento and Commercial Streets. Before five o'clock every spot from which a view could be obtained was crowded, and every building and housetop for blocks was alive with humanity. The armed forces of the Committee commanded all the approaches to the spot. Horsemen guarded the outposts on the intersection of the streets and heavy ordinance were stationed at the corners of the streets, which were manned by the artillery companies. As far as the eye could reach in every direction seemed to be nothing but a living mass. At half-past five the Executive Committee were escorted from the rooms. The prisoners were then taken from their cells and placed each in a carriage accompanied by a guard of officers and driven to the execution grounds.

Both the prisoners ascended the scaffold with a firm step and were to all appearances little affected by the awful summons. Both aided the officers in adjusting the noose to their necks. With great coolness they took off their neckties and loosened their shirt collars. After the ropes had been placed on their necks Brace turned to his companion and extended his hand which was taken by Hetherington. A few words passed between them as if bidding each other adieu.

Hetherington then proceeded to address the assembly:

Gentlemen: You may think me a hardened sinner but I appear before you cool, unconcerned and free. I am now about to meet my Maker. To the best of my knowledge I never lived a day in my life that I was afraid to meet my Maker that night. (To the reporter—Have you got that?) Do you think that I am boasting or bragging, gentlemen? I am not. The Rev. Bishop Kipp has been with me all day—not all day, but nearly all.

Brace: Go on, go on with what you have to say. Here I am murdered by the Vigilance Committee like a dog. (To the Executioner) away, you d——d dog.

Hetherington: I am not more penitent today than I have been any day of my life.

Brace: Go on, old hoss.

Hetherington: In a conversation which I had with Mr. O'Brien, two weeks ago, our conversation turned upon religion, and I assured him that there never was a day in my life—

Brace: Hurry up, and not stop so long. If I could I would kick you off here. Do you think I want to stand here and be stared at by these ignoramuses? I wish to meet my doom immediately.

Hetherington: They tell me to stop. (Several voices, go on, go on, Hetherington.)

Hetherington: I have not disobeyed any of the rules since I was put in that house. I should be very sorry to do it; if you will say go on, I will go on.

Brace: Go on, and brave it out don't talk about Dr. Kipp. They don't want to know anything about him.

Hetherington: About my conversation with Dr. O'Brien, it turned upon religion.

Brace: I'm drunk; so I'm all right. Go on. I am going to talk at the same time. Gentlemen, I hope you will glut your murderous eyes in looking upon my death struggle. I will not be still.

Hetherington: I told the Doctor I was prepared to meet my God at any moment; and furthermore, that I never lived one day in my life that I was not prepared to meet my God at night. Dr. P. O'Brien will make an affidavit to that I think, if called upon.

Brace: You have your vengeance gentlemen, to your hearts' content; I don't care a d—n; I want you to understand that clearly, fully, and distinctly, gents.

Hetherington: The gentlemen have given orders to go ahead. I will change my note; and will merely say, as orders have been given to stop, that in the first difficulty I had with Dr. Baldwin, I had to shoot him in defence of my own life.

Brace: I am Brace; I shall die murdered by the Vigilance Committee, July 29th, 1856. I wish that clearly and distinctly understood on the house-top, there.

Hetherington: I was acquitted of that, but still it hangs upon me. I must stop; but I will first add, that so far as killing Dr. Randal is concerned, I merely asked for a conversation with Mr. McCorkle, when he turned around and drew his pistol. I had to kill him to save my own life. I have lived a gentleman all my life, and I will die a gentleman, though on the gallows. I defy any man in the whole world to prove that I have done one dishonorable act in my life. I have been abused by the public press of this city, where I have resided for five or six years, for some cause unknown to me. I am in a few minutes to be launched into eternity. You may please yourselves, notwithstanding I have no bad feelings towards any person living. I forgive every man freely, as I expect my Redeemer to forgive me. Lord have mercy on my soul!

Brace: God damn it, dry up! What's the use talking to them?

Hetherington: I was going to make a remark that very few people—

Brace: Go it old hoss!

Hetherington: I have led a life, pure, mild, and above all reproach. As to how I have been treated, I will say for Mr. Gillespie that he insulted me very much, but I freely forgive him. T. J. S. Smiley has been a friend to me.

Brace: Come, dry up. What the hell is the use of keeping me here, just waiting for you? I want to go through with it. I will roll myself up in the American flag, and die like a thieving dog.

Hetherington: My witnesses were never put before a jury. I protested against several things that had been done. I am satisfied that no jury on the face of the earth would have convicted me. So far, a fair trial I have not had. I am not afraid to meet my God. I hope the Lord will have mercy on my soul. I hereby forgive

every man on the face of the earth. I ask every man living to forgive me as freely as I forgive him. Gentlemen, I am here before you all. Do not believe that I am hardened. I have prayed from the day of my birth to the day of my death. (The executioner here stepped up behind and gently drew on the white cap.) The Lord have mercy on my soul. I will meet my Saviour. I should like to have seen Fletcher Haight, but that was denied me. Remember me to Fletcher Haight and Henry Haight. Lord have mercy on my soul.

While Hetherington was speaking the caps were drawn over their faces, the signal was given from the bell of the Vigilante building for the executioner, who, with mallet and chisel cut the cord that sustained the drop, and at once the two victims were suspended in mid air. Death was almost instantaneous.

THE TRIAL OF JUDGE DAVID S. TERRY FOR AN ATTEMPT TO MURDER AND FOR OTHER CRIMES, SAN FRANCISCO, CALIFORNIA, 1856.

THE NARRATIVE.

On June 21 one of the Vigilance Committee policeman named Sterling A. Hopkins,¹ was named to arrest a disreputable character named James R. Maloney. He found him in the office of Dr. Richard P. Ashe, a captain in the Law and Order force and Naval officer in San Francisco. With him was David S. Terry,² Chief Justice of the Supreme Court, who announced that as a peace officer, he forbade the arrest. Hopkins withdrew and soon returned with several men and finding the party on the street, attempted to seize Maloney. Terry, with a pistol or gun interposed. Hopkins took hold of it and in the struggle that ensued Terry drew a bowie knife and stabbed Hopkins in the neck, inflicting a dangerous wound. Terry and his friends fled to the Armory. Word

¹ "He appears to have been a man who by his officiousness, had foisted himself upon the Committee; one of those undesirable characters of whom the organization had not yet purged itself." Hittell, Vol. 3, p. 568.

² TERRY, DAVID S. (1823-1889). Born Todd Co. Ky. His mother moved with him to Texas in 1833 and purchased a cotton plantation. He studied law and was admitted to the Texas bar in 1844, practising law at Galveston until he was enlisted in the Mexican war. Removed to California 1849 and settled at Stockton where he practised until elected a Judge of the Supreme Court in 1855; Chief Justice 1857-1859. His killing of Senator Broderick in a duel practically ostracised him, so he left the State and in 1862 joined the Confederate army where he rose to the rank of a Brigadier General. After the war he went back to Texas and engaged in business but returned to California and resumed the practise of law in Stockton. Delegate to Constitution Convention, 1878; Presidential elector, 1880. In January 1885 he married Sarah Althea Hill and was killed by Neagle in August, 1889. (See post p. 467.)

being sent to the Committee, in a short time a large Vigilance force surrounded the Armory and demanded the surrender of the two men, which was done and they were taken to the Vigilance headquarters.

The following account of the killing of Broderick is taken from A. E. Wagstaff's History :

David C. Broderick was born in the District of Columbia in February, 1820, and as a boy worked with his father as a stonecutter on the United States Capitol building. He afterwards joined the New York Volunteer Fire Department and conducted a saloon; at the same time becoming a politician. He removed to San Francisco in 1849; was a leader in organizing the volunteer fire department there, "Broderick No. 1" being the name given one of the fire companies in his honor. He was elected a State Senator in 1852 and subsequently president of the Senate. He was elected to the United States Senate in January 1857.

During Terry's incarceration by the Vigilance Committee, Broderick did all in his power to assist him and they were close friends.

When the Lecompton convention was held in 1859, Broderick was in control and Terry sought to be renominated, but it was decided by Broderick that it would not be good policy to give him the nomination. This caused Terry to deliver a speech in Sacramento in June, 1859, in which he stated that the convention which refused to nominate him was owned by a man whom they were ashamed to acknowledge as their master. Two days afterward Broderick called the attention of D. W. Perley, a former law partner of Terry's, to it and referred to Terry as a "damned miserable ingrate" for failing to appreciate what he (Broderick) had done for him while he was in the custody of the Vigilantes. He further stated that he had changed his mind in regard to Terry's honesty.

Perley challenged Broderick to fight a duel, but Broderick declined to accept the challenge because he was about to enter into a bitter political campaign, and for the further reason that Perley did not occupy an equally elevated or responsible position. But he added that when the campaign was concluded he would be prepared to answer for any statement made by him.

The election resulted in the defeat of Broderick by U. S. Senator William T. Guinn. Terry then wrote the following letter to Broderick:

"Oakland, September 8, 1859.

"Hon D. C. Broderick—Sir: Some two months since, at the public table of the International Hotel, in San Francisco, you saw fit to indulge in certain remarks concerning me, which were offensive in their nature. Before I had heard of the circumstance, your note of 20th of June, addressed to Mr. D. W. Perley, in which you declared that you would not respond to any call of a personal character during the political canvass just concluded, had been published.

"I have, therefore, not been permitted to take any notice of those remarks until the expiration of the limit fixed by yourself. I now take the earliest opportunity to require of you a retraction of those remarks. This note will be handed to you by my friend, Calhoun Benham, Esq., who is acquainted with its contents, and will receive your reply.

"D. S. TERRY."

Broderick requested Terry to designate what remarks were considered offensive. Terry did so and the Senator replied that he had made the statements attributed to him and that it was for him (Terry) to judge whether they afforded good grounds for offense. Terry then stated that he was left no alternative but to demand the satisfaction usual among gentlemen, and appointed Calhoun Benham, former district attorney in San Francisco, to arrange the details. Terry then resigned as Chief Justice of the Supreme Court. The seconds met, decided that pistols should be the weapons used, and that the time and place of the meeting would be at sunrise, September 11, 1859, near Lake Merced, San Mateo County. Warrants for their arrest were issued and when the distance had been measured off and Terry and Broderick were handed their weapons, they were placed under arrest, but the cases were dismissed the next day.

On the following morning, September 13, they met again near the same place. It was agreed that the combatants should fire at the count of three, but at the count of one Broderick accidentally discharged his pistol, the ball striking the ground nine feet from him, but in the direction of Terry. Just at the count of "two" Terry fired, the ball striking Broderick in the chest. His frame trembled like a ship that had struck a rock. He gradually released his hold on his weapon, and after a heavy convulsion, sank to the ground. The gigantic Terry stood like a statue with his arms folded, closely watching Broderick.

Terry left the field with his seconds, ex-District Attorney Calhoun Benham and Thomas Hayes, after whom "Hayes Valley" was named, and they proceeded to Terry's home near Stockton. On the 16th Broderick died, Captain of Detectives and Ellis procured warrants for Terry's arrest. Mr. Ellis, who subsequently served as Chief of Police, afterwards related his experience in attempting to serve the warrant, as follows:

"Lees and I procured a warrant against Terry and had it properly endorsed. We then proceeded to Terry's home. When we arrived within about one hundred feet of the house, a window was thrown open and Calhoun Benham, Tom Hayes, Sheriff O'Neill and Terry leveled shotguns at us and told us to 'halt.' We did so and announced that we were officers with a warrant for Terry. He stated that he was certain that he would not receive a fair trial and feared violence at that time, but agreed to surrender three days afterwards at Oakland. Knowing that he would keep his word in this, as we also knew he would do when he told us that if we came nearer to his house they would all shoot, we decided to allow him to dictate terms. He surrendered as per agreement, and the

case was heard by Judge James Hardy in Marin County, a change of venue having been granted because of the alleged prejudice against Terry in San Francisco. This case was dismissed but Terry was subsequently indicted by the Grand Jury in San Mateo County. The point was then raised that he had been once in jeopardy, and that case was also dismissed."

A full account of the duel is given in Shuck's *Hist. Bench & Bar of Cal.*, pp. 245-264.

VOLNEY E. HOWARD,³ a personal friend of Judge Terry and who had succeeded Sherman as State Major-General, appeared at the building and demanded entry. The Vigilantes who were then guarding the doors denied him admittance. "Perhaps," remonstrated Howard, "you do not know who I am." "No," answered the vigilance guard, "we do not." "Well," replied the other, "I am General Volney E. Howard." The guard rejoined that it made no difference who he was he could not pass. Howard inquired if he wished to see the city laid in ruins. "No," said the guard "but you cannot enter." And with this Howard was obliged to retire. Later he called on President Coleman and several of his aids, and attempted to impress upon them the fact that they and their associates were outlaws and that they were taking very unwarrantable responsibilities upon themselves which they might regret. He said that he would put them down in sixty days if not before and added that he had sent on to the central government at Washington for aid and that it would certainly be forthcoming in a very short time. But in the meanwhile he desired to have an interview with the executive committee. But nothing came of this and he went to Sacramento where at a public meeting he denounced the Committee and their arrest of his "distinguished friend, the able and high minded Justice Terry." And he reported to the Governor that he had no doubt but that "the insurgents aim at nothing less

³HOWARD, VOLNEY E. (1808-1889). Born, Norridgewock, Me.; studied law and was admitted to bar; moved to Mississippi; began practise in Vicksburg; edited the "Mississippian" for several years; removed to San Antonio, Texas, 1847. Member of Congress 1853; sent on mission to California by President and took up residence there; died at Santa Monica. See *Biog. Cong. direct.* (1774-1911) 1913.

than an entire overthrow of the State Government and secession from the Federal Union.”

On June 27 Judge Terry was brought before the Executive Committee sitting as a jury. President Coleman addressed them as to their duties and then Mr. Smiley read the charges preferred by the indictment. To these Terry pleaded not guilty. Mr. Smiley then opened the case for the prosecution. A large number of witnesses were called by both prosecution and defense and the testimony was not closed until July 19.

Terry's position as a Justice of the Supreme Court of the State caused many persons, even members of the Committee, to hesitate about trying him⁴ and propositions of a compromise were brought forward by prominent and influential citizens. He seems to have at first agreed to the proposal that he should resign his office and leave the State but later to have repudiated it.

The Committee learning that a writ of *habeas corpus* was to be issued by the Federal Court resolved that in such case every effort to secrete him and thus avoid collision with the United States authorities should be resorted to; but in no case should Terry be surrendered. Terry's next move was to attempt to get Commander E. B. Boutwell of the United States sloop-of-war *John Adams*, then lying in the harbor of San Francisco, to interfere and thus bring about on his own behalf, the conflict with the federal authorities which the Law and Order party had failed to bring about on behalf of the State. Boutwell seemed to be not only favorable to the project but to have unlimited confidence in himself to manage and carry it out, and had it not been for the cooler and more prudent authority exercised over him by his superior, Farragut, he might have done incalculable damage. He had first addressed the Vigilance Committee on June 21 in reference to the arrest of Dr. Ashe the naval officer of the station, asking how long he was to be kept in confinement and asserting that the suspension of the duties of the naval officer might

⁴ As James Dow, a member of the Committee very graphically put it: "We started out to hunt coyotes, but we have a grizzly bear on our hands and we don't know what to do with it."

embarrass him in getting to sea as soon as he proposed. The Committee returned a polite reply that though it was impossible to tell how long Dr. Ashe would be kept in custody, all possible facilities would be afforded for the transaction of his official duties; and they trusted that the unavoidable circumstance of Ashe's detention would occasion no inconvenience to Commander Boutwell or delay the departure of his ship.

On June 27 the Governor addressed a communication to Boutwell in which he asserted among other things, that Terry while "engaged in the due performance of his duties as a peace officer of the State and in the defense of his lawful rights as a citizen thereof" had been assailed by a body of armed men, members of the Vigilance Committee; that he had been soon afterwards forcibly seized by them, confined at their place of meeting and held and deprived of his liberty in utter violation of his rights under the constitution of the United States and of California and the laws enacted in pursuance thereof; and further, that from the condition of affairs existing in San Francisco, and he thought he might add in other parts of the state, he had no hesitation in saying that Terry's life was in imminent danger and peril from the lawless violence of the Vigilance Committee; that it was wholly beyond the civil or military power of the state to protect him from such threatened violence without the resort to means which would in all probability involve the state in civil war—a calamity greatly to be deprecated; and that therefore in the name and by authority of the power vested in him as governor of the State of California he asked at his hands and with the power and means under his command, the protection and security of the said Terry from all violence or punishment by said committee or any other power "except such punishment as may be inflicted on him in due course of law."

Boutwell thereupon wrote to the Committee informing them that they were either in open rebellion against the laws of their country and in a state of war, or they were an association of American citizens combined together for the pur-

pose of redressing an evil, real or imaginary under the suspension of the laws of California. If they occupied the position of being in a state of war he, as an officer of the United States requested them to deal with Judge Terry as a pension of, or against, the laws of California, they ought—if they desired to occupy the position of acting under a suspension of or against the laws of California, they ought—from a desire to conform to the requirements of the constitution, from a regard to justice and above all from a desire to avoid the shedding of American blood by American citizens on American soil—to surrender Terry to the lawful authority of the state. They were familiar, he doubted not, with the case of Kostza; and if the action of Captain Ingraham in interfering to save the life of Kostza who was not an American citizen, met the approbation of his country, how much more necessary was it for him to use all the power at his command to save the life of a native born American citizen whose only offense was believed to be an effort to carry out the law, obey the governor's proclamation and the defense of his own life. The attack of the policeman of the Vigilance Committee, who perhaps would have killed Terry if Terry had not wounded him, was clearly without sanction of law. They should therefore pause and reflect before they condemned to death in secret an American citizen who was entitled to a public and impartial trial by a judge and jury recognized by the laws of the country. He trusted they would appreciate his motives and consider his position and prayed that some arrangement should be made by which peace and quiet might be restored to the excited community.

The Committee replied to Boutwell that it had submitted the whole of his correspondence with them to his superior officer, Captain Farragut. The result was a characteristic rebuke from Farragut, severe though polite, written the next day. Farragut wrote that he had received from the Vigilance Committee all the correspondence and an additional note requesting his interposition. He went on to say that although he agreed with him in the opinions expressed in the correspondence in relation to the constitutional points involved,

he could not agree that he, Boutwell, had any right to interfere in the matter of the Vigilance Committee in any respect. The constitution required before there could be any interference on the part of the general government, that the state legislature should be convened if possible; and only in case it was not possible to convene the legislature, could there be any interference on the application of the state executive. He had seen no reason why the legislature could not have been convened long before; yet it had not been done nor had the governor taken any steps that he knew of to call them together. In all cases within his knowledge the government of the United States had been very careful not to interfere with the domestic troubles of the states when they were strictly domestic and there was no collision with United States laws; and it had always been studious to avoid as much as possible collision with state-rights principles. The commentators agreed that a reference to the President by the state legislature and executive was the great guarantee of state rights. He added that he felt no disposition to interfere with Boutwell's command; but so long as Boutwell was within the waters of Farragut's command it became his duty to restrain him from doing anything to augment the very great excitement in the distracted community, until they received instructions from the government. "All the facts of the case," he said in conclusion, "have been fully set before the government by both parties and we must patiently await the result."

Boutwell replied to Farragut, defending his action as dictated by humanity and a conscientious discharge of his duty and stated that as he did not wish to augment the excitement that existed by his presence he would take to sea at once. To which Farragut replied: "You will not sail until these arrangements are made, nor until further orders from me, as your presence may be necessary in the harbor. You will receive on board Judge D. S. Terry for his personal safety, should any arrangement be accomplished to that end."

Terry pleaded his own case, reiterating what he had maintained from the beginning, that he merely had resented an insult and defended his life. The Court was anxious to be

rid of him now that he no longer was a potential murderer, for Hopkins had recovered from his wound, and not only in his own person, but as a State officer had been punished by much humiliation and loss of prestige. He was found guilty on the first charge. Upon the second charge the committee pronounced him "guilty of assault." The sentence was in these words:

Whereas David S. Terry having been convicted, after a full, fair and impartial trial of certain charges before the Committee of Vigilance, and the usual punishments in their power to inflict not being applicable in the present instance, therefore be it declared that the decision is as follows: That the said David S. Terry be discharged from custody; that in their opinion the interests of the State imperatively demand that the said Terry should resign his position as Judge of the Supreme Court; that this resolution be read to David S. Terry and he forthwith be discharged from the custody of the Committee of Vigilance.

On August 7 the sentence was read to him.⁵

Boutwell received the Justice on board the *John Adams* and fired a salute in his honor. As soon as possible he took the boat for Sacramento, where, though he did not resign his office, he remained quiet for a while, to emerge later in a far more important and terrible role.⁶

⁵ There is no doubt that he owed his discharge not merely to the fact that he was a white elephant—for many members of the committee refused to consider the dignified position he held on the bench—but to the utter and universal contempt which Hopkins had managed to inspire. He strutted about like a swollen turkey-cock as soon as he was able to be out and while still in bed had held daily receptions. Finally he appeared before the Vigilance Committee and offered to compromise with Terry on a money basis. The executive committee, disgusted that such a creature should have crept into their ranks, were the more inclined to be lenient with Terry who at least was a man. Atherton (G). p. 216.

⁶ The killing of Senator Broderick, see *ante* p. 126.

THE TRIAL.⁷

*Before the Second Vigilance Committee, San Francisco,
California, 1856.*

HON. WILLIAM T. COLEMAN,⁸ *President.*

June 27.

Today the trial of Terry began. It was resolved that the trial should be governed by the same rules which had been adopted in the Casey case, provided however that no vote of the executive committee inflicting the death penalty should be binding unless passed by two-thirds of those present and the trial jury should not be less than twenty-six members or two-thirds of the whole body. The order of trial is first, a statement of the prosecution; second, evidence for the prosecution; third, statement of the defense; fourth, evidence for the defense; fifth, speech of counsel for the defense; sixth, speech of Terry if he desired to make one; and seventh, closing speech of prosecuting attorney.

Thomas J. L. Smiley, for the Prosecution; *Miers F. Truett*, for the Prisoner.

The following indictment was read to the prisoner:

THE PEOPLE V. D. S. TERRY.

1. David S. Terry is charged with resisting with violence the officers of the Vigilance Committee while in the discharge of their duties.

2. David S. Terry is also charged with committing an assault with a deadly weapon with intent to kill, upon Sterling A. Hopkins, a police officer of the Committee of Vigilance, on the 21st day of June 1856. David S. Terry is also charged with breaches of the peace and attacks upon citizens while in discharge of their duties, as follows:

3. In 1853, an attack on Mr. Evans, a citizen of Stockton.

4. An attack on Mr. Roadhouse, a citizen of Stockton, while in the Court House.

⁷ Bibliography. "Trial of David S. Terry by the Committee of Vigilance, San Francisco. San Francisco, R. C. Moore and Co., Printers, Alta, California. Newspaper Office, 124 Sacramento Street, near Montgomery. 1856."

And see *ante* p. 125.

⁸ See *ante* p. 61.

5. An attack on Mr. King, a citizen of Stockton, at the Charter election.

6. In 1853, resistance of a writ of *habeas corpus*, by which William Roach escaped from the custody of the law and the infant heirs of the Sanchez family were defrauded of their rights.

7. In 1853, an attack on J. H. Purdy, in San Francisco.

THE PRESIDENT: Are you guilty or not guilty?

Terry: I am not guilty of any crime whatever.

Mr. Smiley began his opening address at 10:50 and closed at 11:05.

THE WITNESSES FOR THE PROSECUTION

D. W. Barry: Am a copying clerk in Wells Fargo office. About 2 last Saturday Mr. Hopkins asked me to assist him in arresting Maloney and Phillips. Baugh went with us. Hopkins went upstairs. I stood on the corner; Hopkins came down, borrowed Dr. Cole's horse and went to the rooms for help. Hilliard went up and soon came down stairs, then Dr. Ashe came down, went round the corner and returned with a double barreled shot gun, went up stairs and in a moment six men came down with guns; the ones I knew were Judge Terry, Dr. Ashe, Maloney, and Ham. Bowie. Then Hopkins came up on horseback. I told him what I had seen and asked him what we should do; "take them" he said. So we started after them, on the run. Saw Terry present the gun at Hopkins and the latter seize it; ran to assist him and saw Ashe put his gun cocked to Bovee's breast who knocked it aside and put his revolver to Ashe's ear who turned pale and said "don't shoot." Someone I do not know pointed his gun at my ear; I pushed it aside—drew my pistol and made him drop it; turned

and saw that Bovee was clear of Ashe and saw Terry in the act of drawing a knife from Hopkins' neck. Hopkins staggered and cried "I'm stabbed, take them, Vigilants." Terry then started for the armory, Bovee and I after him but they would not let us in; heard only one pistol report and that was after Terry and Hopkins were in collision. Terry had a gun, heard it was a rifle, thought it was a shot gun. When we followed the men at first they kept turning and pointing their guns at us; they seemed to be protecting Maloney, theirs was a larger party than ours. Hopkins seemed to snatch the gun solely to protect himself. He showed us the order of arrest issued by the Committee before we started. Did not see him use a weapon at any time that day.

Horace A. Russell: Was one of the party detailed to arrest Maloney. We went to Dr. Ashe's office over Palmer and Cook's Banking house. He asked for Maloney who said, "come inside." Hopkins went in but Dr. Ashe locked me out. Heard them talk and then Ashe put Hopkins out saying, "tell your

Committee they can't arrest anyone in my office." Then Hopkins went on a horse for more men. Then Ashe came out, went back with the gun and the crowd came out as related by last witness. When Hopkins got back we followed them, he ahead on the run, Dr. Ashe and Judge Terry were in the rear of their party, both with double barreled shot guns. Terry prevented with his gun, Hopkins passing him, did not hear what he said for I had tackled Ashe and pulled a pistol from him while Bovee got hold of his gun. Nugent, a police officer, caught hold of the gun also and struck my arm which caused my pistol to discharge. Then I saw Terry and Ashe run up the street and go in the Armory. I placed men around it until they were taken prisoners. I saw nothing of the stabbing as I was occupied with Ashe; heard another pistol shot besides mine; Terry's party could easily have escaped to the Armory without resisting the Vigilance Officers; none of our party displayed any arms or made any threats; when Terry interfered with Hopkins he was trying to cover the retreat of Maloney. Do not know if Hopkins presented the order of arrest to Maloney as I could not hear through the door. When Hopkins grabbed Terry's gun they had a struggle for it, he got it out of Terry's hands I think.

James Bovee: Was one of the party ordered to arrest Maloney. Was with Hopkins as we chased the men with the guns. As we closed on them I said to him, "Are you going to arrest a man out of that party at all hazards?" He said "Yes." Then

two or three of them turned and pointed their guns at us; one of them asked me if I was a friend; as Hopkins attempted to pass he was stopped by Terry's gun which he grabbed by the barrel. Just then Ashe turned his gun on Hopkins and I rushed up, caught hold of it, drew my pistol to his head and told him to let go of the gun. I then turned and saw Terry with a large knife in his hand raised above the shoulder; I brought my gun up to my shoulder to fire at Terry when Nugent rushed up, caught hold of it and said, "For God's sake don't fire." I looked and saw the knife go down and heard a pistol shot; then Hopkins came up with his hand on his neck. I followed them to the Armory; made no threats and heard none from our party; I took hold of Ashe's gun because he was pointing it at Hopkins. Think Terry said when Hopkins closed on him "You can't arrest a man out of this party."

H. A. Thompson: About June 1, going to Sacramento on the *Antelope*, men were talking in the cabin about the Vigilance Committee. The prisoner was one and I heard him say that he was opposed to it, that he had been in San Francisco at a friend's house for some days expecting it to search it, and that he would have shot the first man that entered the house for that purpose.

John Hanna: Am a merchant. On Saturday afternoon, being on the street, I followed the men running, with Mr. Hopkins leading, then saw him wrestling to get a gun which Terry had pointed at him, at the same time

I saw Bovee take hold of Ashe's gun. I grabbed Ashe and then saw Terry raise his hand over Hopkins with a dirk in it; Hopkins I saw trying to go up the street when Terry stopped him with his gun; when Terry raised the knife I thought I saw a pistol in his other hand.

Edmund J. Saulsbury: Saw the men come out of Palmer Cook building with guns in their hands; saw Hopkins rush into the crowd and take hold of Terry's gun. Saw no arms presented by Hopkins' party except the pistol Bovee put to Ashe's ear. If Terry's gun had been discharged as Hopkins grabbed it he would have been shot I think. I heard only one pistol report.

Joseph Capprise: Am a carpenter. I followed Hopkins after the men to assist him. Saw him take hold of Terry's gun, and sprang and grasped it by the breach; noticed the gun was cocked. Just then a pistol in Russell's hand went off and the ball went through my coat. At this instant I saw a knife in Terry's hand, and a little later saw Hopkins go down the street with his hand to his neck and his fingers bloody. Did not see the blow struck; his hand was falling when I saw the knife.

John Lord: From the door of my grocery store on Saturday afternoon I saw a large and a small man in a crowd scuffling with a gun, the large man seemed to be shoved off the sidewalk, he then drew a knife and stabbed the small man through the coat collar; he then ran up the street with the knife in his hand. The large man I recognize as the prisoner.

David Jacobi: Am a pedlar. Saturday afternoon I saw the crowd with guns followed by Hopkins and some others. Saw Dr. Ashe scuffling for his gun, heard a pistol shot and saw Hopkins coming up the street with his hand on his neck; supposed he had been shot.

Albert Camp: Am a copper-smith. Working in my shop Saturday afternoon I saw a crowd of men scuffling; some of them had guns; saw a small man wrest a shot gun from a large man, then the large man took out a large bowie knife about 12 inches long and about 3 fingers broad—an ugly looking one—and I thought he struck the small man through the head with it. The prisoner is the large man; the small man ran up the street bleeding profusely.

Michael Hilt: Saw the scuffle described by the witnesses. When Hopkins grabbed Terry's gun he had no weapon in his hand; know he did not take hold of him by the throat or hair. When he fell the rest of the party with guns ran to the Armory.

Joseph W. Galloway (a boy), *John D. Hildreth* (a provision merchant), *E. S. Desrosier* and *Modeste A. Dafton* (Frenchmen), *Ira Marden* (coffee merchant), *J. W. Cartwright* (painter), *A. J. Tabor* (grocer), *C. W. Grannis* (bookkeeper), *Henry Frank* (baker), *Richard E. Easton* (stevedore) and *Lewis Rosenthal* who each witnessed the affray from the sidewalk or from the doors of their shops, corroborated the foregoing witnesses as to the first group of men having guns and pointing them at their pursuers, as they retreated, as to the struggle between Bovee

and Ashe and Hopkins and Terry for the possession of the guns, as to the pistol firing and as to the stabbing of Hopkins by Terry.

R. B. Cole: Am a surgeon and was called on to attend to Mr. Hopkins within 10 minutes after he was wounded; found him bleeding very profusely. It was a knife wound in the neck. The force must have been considerable as it penetrated 6 layers of cloth, was four or five inches in depth and penetrated the larynx or upper part of the windpipe and severed a large branch of the carotid artery; I arrested the hemorrhage temporarily. The other surgeons who arrived later advised deferring the operation to which I consented. Four hours later when I saw him next he was bleeding internally, his respiration difficult. We now agreed that a speedy operation was necessary which I performed. Some of the dangers of his case have now (June 30) passed, but his condition is still critical.

S. A. Hopkins (his evidence was read as taken before a notary public): On the afternoon of Saturday, June 21, I went to Dr. Ashe's office over Palmer and Cook's bank, with a paper from the Committee for the arrest of Maloney and Phillips. Saw Maloney sitting at a table with several others and told him I wanted to speak to him if he would step to the door. He answered, if I wanted to speak to him I must come in. I stepped in and told him of the warrant and that I wanted him at once. Somebody locked the door, another man presented a pistol at my head and Judge Terry drew

a knife; Dr. Ashe exclaimed that no one could be arrested in his office, so I withdrew, left some of my aids to watch, borrowed a horse from Dr. Cole and rode to the Committee rooms where I was told to go right back and they would send help. When I got back Mr. Russel told me that the party had left and we followed catching up with them at the Engine house. The first one that stopped me was Terry; he put his gun up against me; told him that I didn't want anything of him, that I wanted Maloney. He placed the muzzle against my body, but I wrenched it from his hands and as I threw my back against him, he stuck a knife into me. I left, going down the street with the gun in one hand, holding the wound with the other and bleeding at the mouth; told the people that Terry had stabbed me, to go on and arrest Maloney.

I did not have hold of Terry's coat, hair or person at any time. It took both hands to take care of the gun. I had the warrant with me all the time.

M. R. Evans: Lived in Stockton in 1849-51, I opposed the prisoner as Mayor and he became my enemy. Christmas eve, though ill, I went to a party at a friend's house—Mrs. McPherson. Going to the door I saw my porter standing there, so badly cut and disfigured that I hardly knew him. Told him to go home and was walking with him when I was hit on the head with a pistol by Judge Terry. Mr. Ashe, Mr. Perley and Mr. Lubbock fell on me and beat me with clubs and pistols until I was senseless. Heard Terry say several times, "kill the damned

son of a b——." My head was badly cut and I could not leave my house for several weeks. Terry's character was not good in Stockton. Knew of his being engaged in several personal difficulties. His reputation was that of a quarrelsome, ugly, fighting man, whose pistol was out on all occasions and was in the habit of drawing his knife upon people.

John H. Purdy: In September 1853 a man came into my office in this city and asked me if I was the editor of the paper he held in his hand. I said, yes. He pointed to a letter in it and demanded the name of the writer. I said it was a private letter and I could not give it. He said he would hold me responsible, would have the name or my life. I told him he couldn't have the name; he drew a cane and as he struck I threw up my left arm and received the blow upon it. I at the same time caught the cane and wrested it from him. As I struck, Mr. Perley reached forward and took the cane. At the same time my assailant threw back his right arm. I let go the cane in order to fend off the anticipated blow. Instead of striking with his fist he seized his knife and raised it to the full extent of his arm and then with the knife drawn he said: "Now, d——n you, give me that name or I'll take your life." He held the knife drawn for a moment suspended and I reached round twice and the second time succeeded in grasping his arm and bringing it down to his side. I had called out "police" and "murder" and just here a policeman came in. He refused to be arrested; told the policeman not

to lay his hands on him but to tell him where he wanted him to go and he would go. After we were separated by the policeman and while a few words were passing between them, he raised his fist suddenly and struck me in the mouth. At some period during the scuffle, I do not know when or how, my head was cut slightly. The first I knew of it was as I stooped down to pick up my wig. I found the blood running down over my forehead. There were other persons then at the door; Mr. Fargo I think was one. The article was a political one; it did not reflect on Terry's honesty.

D. C. Fargo: Had an office in the same building as Mr. Purdy. Terry came in one day and inquired where his room was. I told him and he went there with three other men. The next thing I heard was Mr. Purdy hallooing murder; went immediately to the room. Mr. Terry had one hand hold of Mr. Purdy's throat with a knife drawn in the other; took hold of his arm and the knife out of his hand. He asked Mr. Purdy for the author of the publication and Purdy replied, "I cannot give it to you." He (Terry) struck him in the face with his fist. When I first went in there was blood running from the top of Purdy's head. Terry had a knife in his hand but I didn't see him use it. Terry asked Purdy for the author of the publication and when he said he couldn't give it Terry said, "I'll kill you" and struck him with his fist. Then the police came in and took him away.

L. Villinger: Was a watch repairer in Stockton. Judge Terry brought me a watch to repair;

told him it would cost \$12; he objected and I agreed to do it for \$5; but I said I would do it as well as I could for the price. When he came for it, he left me only \$4 and came in later and said it did not go well. I told him he could not expect better for the price and that he had not paid me what he agreed. He replied that he did give me \$5 and drew his pistol and endeavored to strike me with it on the head, but the distance he was from me prevented it. My wife, who was in the back room, came out and asked him what he meant by coming into the house and acting so with his pistol. He said, "Madam you may thank God you were sitting there or this man would have had this pistol through his brain." A crowd now collected in the house and my wife urged them to put Terry out or arrest him. Terry said, "There are not men enough in Stockton to put me out of this house." He soon went out of his own accord. Speaking of the matter to Dr. McLean, my landlord, and asking him what I should do, he said to me to prepare myself and if Terry came there again to shoot him at once, that nothing could happen to me for it, for he saw some of the affray. I thought it unsafe to stay in Stockton, so I sold out and left.

Mr. Smiley produced a certified copy of the indictment by the

grand jury of Joaquin County of David S. Terry for an assault with a deadly weapon on Joseph Roadhouse, on March 17, 1851. Also the verdict of guilty with a fine of one dollar.

Lemuel Lyon: Am a merchant in Stockton; many of Judge Terry's associates are classed among the worst people in Stockton. Can't say that he himself has ever borne a really bad character, aside from his associations. Never saw him commit an assault upon any one. Saw him in a justice court threaten to cane a man for looking at him so hard. Said he did not allow any man to look at him in that manner.

Cross-examined: The character and associations of Judge Schafer in Stockton have been of the very worst character; I mean the general report which is current there; that he visits houses of ill-fame and is out to three or four o'clock in the morning, drinking in gambling saloons. Have heard this from the police. It was not known until the last four months. Wouldn't believe Judge Schafer under oath in a case of this kind. He is not looked upon as a man of truth and veracity among the best citizens of Stockton. Terry's reputation in Stockton is that he is a fighting man and that he will fight, particularly when he has backers with him, upon very slight provocation.

THE PRISONER'S STATEMENT.

David S. Terry—Gentlemen: You doubtless feel that you are engaged in a praiseworthy undertaking. This question I will not attempt to discuss; for while I cannot reconcile your acts with my ideas of right and justice, candor forces me to confess that the evils you arose to repress were glaring and palpable, and the end

you seek to attain is a noble one. The question on which we differ is as to whether the end justifies the means by which you have sought its accomplishment; and as this is a question on which men equally pure, upright and honest might differ, a discussion would result in nothing profitable.

I desire before noticing the charges, to disabuse your minds of a false impression, most zealously thrown out in the newspapers, advocating your cause, to wit: That those gentlemen who most warmly oppose your organization were the associates and sympathizers with ballot-box stuffers and other disreputable characters. This in point of fact is not true. Some of those foremost in the vain struggle to organize opposition were men who acknowledged no sympathy with such characters. Your own knowledge of persons will point to individual instances of the truth of my statement; for it is within the knowledge of each of you, that there were men opposing you from principle, whose well-known standing would shield them from any suspicion of the nature alluded to.

You also know that those who are by common consent recognized as the very princes of shoulder-strikers and ballot-box ruffians, have either betaken themselves to their hiding places or have joined in the hue and cry against their former friends and supporters, to whose skill in swelling returns they owe their standing as politicians. These were individuals representing the "honorable" calling on both sides; but the boldest of your opponents were those who had nothing to fear from investigation. For myself I have always been a firm and consistent opponent of this class and have more than once been stigmatised as a bolter from the Democratic party because I uniformly refused to support for office candidates whose nomination had, as I believed, been procured by fraudulent practises.

Now for the charges. The first is, "Resisting the officers of the Committee of Vigilance while in the discharge of their duties." This charge is certainly true; but I do not understand how it can be imputed as a crime, that I, who am a sworn officer of the law, was not guilty of violating my duty as such officer.

But apart from this, there is a very conclusive and satisfactory answer in the testimony of Mr. Bowie which has been submitted to my inspection. I have observed in various newspapers a card purporting to have been published by your authority (which fact has not, to my knowledge been denied) stating that no searches or arrests were made by order of the Committee unless the party making them could produce a warrant under the seal of the Vigilance Committee.

Mr. Bowie testifies that at the time this person (who it since appears was an officer of the Committee), was resisted, he was asked for his warrant, which he failed to produce and that he declared that he had no such warrant. Then admitting that all citizens were bound to obey your mandates, they were by you authorized to resist all those who presumed to act in your name without the proper evidence of their authority. When asked for his warrant or

authority he replied that he had none and therefore he had no right to arrest any one in your name.

The second charge is: "Committing an assault with a deadly weapon upon Sterling A. Hopkins a police officer of the Committee." I deny that I knew or had any means of knowing that Hopkins was an officer of the Committee. There is no evidence that Hopkins informed me or any one in company with me that he was such officer; and in point of fact he did not. It is true that he did call out "Come on Vigilantes," or words of like effect. This may or may not be the shibboleth or rallying cry of your officers. At any rate I did not know it to be so.

So far from my having committed an assault on Mr. Hopkins, the fact is that he, a stranger whose name I did not know, without producing any warrant of authority from any man or body of men, and having no authority to arrest me so far as I yet knew, committed a fierce and violent assault on me, attempted to wrest a gun from my hands, with the, to my mind, evident intention of taking my life; and from what I have since heard, I have no doubt that he would have slain me, in revenge for resisting his attempt to arrest Maloney, if he had succeeded in getting possession of it.

The facts in connection with the affair are briefly as follows: In the afternoon of Saturday, General Howard and myself had a conversation on the state of affairs and the utter hopelessness of resisting the Vigilance Committee without money or arms which the State was unable to procure. In that conversation it was agreed that I should proceed to Sacramento and endeavor by proper representations, to procure the order of the Governor directing Gen. Howard to defer all further effort till a reply was received to the dispatches forwarded to Washington by the last steamer. This order I had no doubt I would be able, on proper representations to procure, which would have the effect in some degree to quiet the very excited feeling of the community. I had subsequently seen General Douglas and had arranged that he and myself should go by the same boat and would have left in a few minutes and thus have ended my efforts to organize a force without the sinews of war.

It may be proper here to state that my position in the matter was not altogether voluntarily assumed. I was urgently requested by gentlemen of undoubted character and standing to take a prominent position, for the reason, as they stated, that it would be useful in keeping the organization alive under the very unfavorable aspect of the contest. At the time I took the first steps I had full assurance that the Governor would be backed with all the munitions of the General Government. In this aspect of affairs I was confident the struggle would be brought to a speedy and bloodless termination.

I was perhaps mistaken in my estimate of the power and nature of your organization; but I was acting under the impression that, inasmuch as you had almost accomplished what was then understood to be its objects, to wit: the prevention of election frauds by the execution of one and the banishment of others, who were

understood to live by the trade of cheating at elections—I supposed that your armed organization would, rather than cause bloodshed, disband; at the same time that enough of system and strength remained to act as a terror to evil-doers and a preventive of such crimes for the future.

After the positive refusal of General Wool to furnish to the State any arms, my fidelity to my friends who were in like circumstances with myself, pride, obstinacy or what you will, prevented my relaxing my efforts as long as a hope remained. After having been frequently misled as to our power to raise funds, finding the effort utterly hopeless, I was about retiring, defeated and dispirited, from the field, when I unfortunately became involved in the only collision which occurred during the whole campaign. As I have elsewhere stated, I thought it my duty to resist any infractions of the law attempted in my presence, however little prospect I may have had of ultimately succeeding. I acted upon this principle. The difference between my position and yours is that being a Judicial officer it is my sworn duty to uphold the law in all its parts. You, on the contrary, not occupying the same position or charged with the performance of the same duty, feel that you are authorized, in order to accomplish a praiseworthy end, to violate and set at naught certain provisions of law, while you allow the rest to remain in full force. You, although you may feel assured that you are right, must see that I could not, with any regard to principle or my oath of office, side with you.

But I have digressed from the statement of facts I desired to make. After preventing the arrest of Maloney we started in a body for the Armory where were a few others and where we expected to receive and obey the orders of General Howard. There were two guns in Dr. Ashe's room and two others were borrowed at a house near by. We supposed the possession of these arms would ensure us a free passage to the Armory and had no thought that we would have an occasion to use them. In this we were mistaken. We were set on by a much larger force than our own. Feeling our weakness we offered only such resistance as to endeavor to prevent our arms from being taken from us. While struggling for the possession of my gun some one behind me took my pistol from my belt, when, fearing that I would be rendered totally defenceless by having my knife taken in the same way, I drew it with my left hand, but still impressed with the inequality of force, I refrained from attacking any one, but merely endeavored to retain my hold upon the gun, when I heard in my immediately vicinity, first the explosion of a cap and then the discharge of a pistol. At the discharge I threw a glance over my shoulder and saw Dr. Ashe apparently confused and staggering. I thought that he was shot. Thinking I would receive the next discharge and seeing several pistols drawn, I thought it absolutely necessary for the preservation of my own life to be rid of my persevering antagonist who continued to struggle for the gun for the purpose as I still think of using it with fatal effect against me. With this view I struck with my

left hand at the most exposed part of him, thinking to disable him. As I struck I released my hold on the gun and turned to Dr. Ashe who I found was uninjured. The other parties having succeeded in taking his gun we made our way to the Armory.

I have been furnished by the Committee with copies of the testimony of a large number of witnesses fully establishing the truth of my statement—eight of whom are entire strangers, whom I do not even know by sight. These men certainly could have no interest in making false statements in behalf of an entire stranger.

I do not know the character of the other testimony, not having seen it. I see by the deposition of Mr. Freeborn that John Hanna was one of the witnesses. I do not know what facts he has stated, but from his known reputation have no doubt that he has drawn largely on his imagination. One difficulty and by no means a small one, in arriving at the truth in an investigation before a body constituted as yours, is the advantage which an unprincipled man has over one who is conscientious. An indictment for perjury—one of the means of insuring the proper administration of justice—will not lie for false oaths taken before you. A villain then who has no just sense of his moral obligations to speak the truth, may stab in the dark by means of false oaths those whom he fears to attack in the light of day and may endeavor even to take the life of another my means of lies, which if spoken in a court house would consign him to a State prison.

I do not mean to say that your Committee would countenance such attempts at assassination; but falsehoods may be ingeniously framed so as to be very difficult of detection at the time and yet be exposed and punished in after proceedings. The fear of this exposure and punishment which tends greatly to prevent perjury in regular judicial proceedings, does not obtain in your tribunal.

I say this much to warn you against the lying tongue of a man who has, it appears, for years been my rancorous and deadly enemy, but has never had the courage to avow it in my presence. I am very certain that I never injured this man and his hatred must have arisen as Mr. Freeborn will testify, from the fact, knowing as I did that common report spoke of him as a tricky and dishonest man. I following my usual course of discouraging any intimacy with such characters, may on some occasion which I have now forgotten, treated him with the contempt he merited or have expressed an opinion of him not complimentary. I however imagine that when you have heard his character spoken of by respectable persons who will be produced before you, you will readily conclude that his evidence is entitled to no weight; that you will regard it as a despicable attempt to stab in the dark a man whose offense so far as concerned him, is that he possessed too much self-respect to associate with a knave.

I feel compelled at this time to earnestly warn you against being betrayed into injustice by the bloodthirsty appeals of a prostituted press. Certain of those most pestilent and dangerous of all nuisances—I mean licentious presses—have for some reason best

known to their corrupt and venial conductors, seen fit to denounce me with all sorts of billingsgate such as in no other country but California has been permitted to befoul the columns of a newspaper, unless such a one as the "Life in Boston" and others of like stripe. The motives of the conductors of the "Evening Journal" I can well divine. Being ultra abolitionists their constant aim has been to establish a sectional party in our midst and to introduce into California the bitter war of sections which now agitates our brethren in the Atlantic states and in which California should have no part. The greatest of my crimes in their eyes is having been born in the south, except daring to establish such a reputation as to obtain the support of the people of a state in which the merits of those parties have been overlooked. You have doubtless noticed the strenuous efforts of this same journal to urge upon the committee actions having a tendency to forward those objects heretofore alluded to. You have wisely kept aloof from any sectional or party feeling and I trust that you will continue to do so.

I cannot so well account for the hostility and bloodthirstyness of the "Bulletin." The editor of that journal seems to be a sort of Ishmaelite; his hand is against every man. In his endeavors to excite prejudice against me he has appealed to the personal feeling of the Committee by publishing that I had abused and spoken against the members of the Executive Committee. If this were true no man worthy of the name would, while assuming to act as judge, allow himself to be influenced against a party for such causes. I trust therefore that the efforts made to create a prejudice against me in your minds will be treated with the contempt it merits. Up to this time I do not know who compose the executive committee. I am acquainted with no member except Mr. Truett whom I met for the first time yesterday. I cannot now say that I have not spoken in strong terms about certain members of your Committee. If there are reports current affecting the reputation of its individual members as gentlemen, it is very probable that I have mentioned such reports; but knowing none of you personally I can certainly have said nothing on my own responsibility. I heard too, I must say with surprise and indignation, an appeal made to the basest feelings of human nature by the member of your body who is appointed to prosecute in this case. He said that "you were not only about to try me but yourselves at the same time; for that if I were right your acts were wrong." If you can allow your judgment to be for one moment influenced by such an appeal you must feel that you are unworthy to sit in judgment upon the vilest criminal. I will not think so meanly of you. Report here speaks of you as honest men and good citizens. I will therefore discard the suspicion, as degrading to both you and to me.

The nature of the other charges against me force me with reluctance to conclude that having already determined to compass my ruin as far as possible, certain persons are anxiously striving to furnish some sort of plausible pretext and by reviving and falsifying transactions long past, excite as far as possible the mind of the com-

munity. I do trust that the good sense, honesty and love of fair dealing in your body will prevent the success of the effort.

The items seem to have been gathered from an evening newspaper. I presume from the fact that you have heretofore refused to take cognizance of such affairs transpiring recently in your midst, they will have no effect on your minds. I answer these because I wish to correct the many falsehoods mixed with the little truth contained in them.

You say "1853, attack on Mr. Evans a citizen of Stockton." Now, no such man was living in Stockton in 1853. I presume the circumstances referred to occurred on the night of the 25th of December, 1850. There was a wedding party (I think the first given in Stockton) at which I was a guest. Whilst the dancing was going on certain rowdies congregated outside, began to make a disturbance by yelling, firing crackers etc. I amongst others, went outside to stop the row. Dr. Ashe, being Sheriff arrested a fellow who was in the act of putting lighted crackers under the door and started with him to the jail. The fellow resisted and drew a small pistol which I took from him. Whilst Dr. Ashe and the city Marshall were taking the fellow off, Mr. Evans interfered. Ashe told him that he was an officer discharging his duty and he must not prevent him. Evans replied that he did not care a d—n if Ashe were an officer—he should release the man; and took Ashe by the collar, when I struck him with the pistol which I still held in my hand. The pistol was a small brass one and the blows were slight, but caused the flow of a little blood, at which he released Ashe, and so the affair ended.

The affair of Roadhouse occurred early in the Spring of 1851. Roadhouse was defendant in a suit which I had instituted before a justice of the peace in behalf of a mechanic to recover pay for repairing a wagon.

Roadhouse had, before the testimony was finished, conducted himself so badly as to be fined by the Justice. When I was summing up the case he insulted me several times. I asked the Justice to keep some show of order as such interruptions were not agreeable to me. I made this appeal because Roadhouse was a disreputable character, a noted pugilist and bully; and I disliked to have any difficulty with him. The justice said to him that if he interrupted me again he would fine him. He replied, "You have already fined me once and you have no right to fine me for interrupting this—when he is telling a falsehood," bestowing a gross epithet from his collection of Billingsgate. I turned promptly to resent the indignity and finding Roadhouse in a pugilistic attitude and knowing his superiority in physical strength and science, I drew a knife and inflicted a slight wound in the fleshy part of his shoulder. This case was tried before Judge Creanor by a jury most of whom were entire strangers to me; and they assessed the fine at one dollar. This small penalty was assessed, I presume, because it was shown that Roadhouse was a turbulent, quarrelsome man; that he was a prize-fighter; that he had insulted and threatened to assault the County

Treasurer for requesting him to pay license on his drinking-house, as well as the Constable who served process on him in the suit I mentioned. There is another evidence that my act was no outrage, in the fact that Judge Creanor who is known to be an upright and honest judge, allowed the verdict of the jury to stand and the judgment to be rendered for one dollar fine. The law in such cases makes it the duty of the Court to fix the punishment and the judge was not bound to pay any attention to the recommendation of the jury as to the amount of punishment, but this is usually done when the verdict is not manifestly unjust. As to the character of Road-house I will show that I have not misrepresented it above; and I will also show that in the county of San Joaquin which some years since became too warm for his comfort, he bears the reputation of a cattle thief.

A great deal is attempted to be made of the fact that I was armed and made the attack in a Court house. If any of you lived in California as early as 1851 you will remember that the carrying of arms was an almost universal custom. You will also know that Stockton had not the most quiet and orderly reputation; and that a Justice's Court in those days was not a place of any great sanctity. I know that if a lawyer was in the habit of doing his duty faithfully he was liable at any time to be attacked for calling things by their proper names. I was not accustomed to permit myself to be governed in the discharge of my duty to clients by the character of the other party or the probability of being attacked by him. I have on more than one occasion been compelled not only to go armed into a court house, but to have a man stand behind me whilst arguing a case to prevent an attack in the rear. On this occasion I was armed because I thought that arms were necessary for my defense in a community almost all of whom were armed; and because I had frequently in the course of my practice been compelled to speak plainly of desperate characters and I was liable to be called to account by them at any moment; and I always thought that the best way of preventing an attack was to be prepared to repel it. The assault was committed in the Court house or rather in the Justice's office, because the provocation was given there. If the character of the place did not shield me from insult, I saw no reason why it should shield the aggressor from punishment.

The charge of attacking Mr. King is also false. I never had a difficulty with any man of that name at a charter election or any other place.

Another charge is an attack on J. H. Purdy; and this time the date happens to be correct. The matter underwent investigation at the time and I was fined three hundred dollars which I paid.

The circumstances were that Mr. Purdy published in his paper what purported to be a communication from Stockton reflecting on my character. I called on him for the name of the author which I had no doubt would at once be given. Mr. Purdy refused to give the author and said he was responsible; whereupon I gave him a slight blow with a small rattan intending not to hurt him, but

merely to inflict on him an indignity. He seized the cane which broke in his grasp and grappled me around the waist under the arms. As I never learned the art of using my hands I struck him twice—think on the head with the handle of a knife. The impression is sought to be made that I tried to kill him. This is not true. If I had desired to slay him it was in my power to do so. I struck him two blows which I could have stricken as well with the point as the handle. Mr. Perley who was present, fearing that I might injure him, called out not to cut when I handed him the knife.

This is the end of the specifications as to my violent and turbulent habits; and what do they prove? That I will promptly resent a personal affront. One of the first lessons I learned was to avoid giving insults and to allow none to be given to me. I have acted and expect to continue to act on this principle. I believe no man has a right to outrage the feelings of another or attempt to blast his good name without being responsible for his actions. I believe if a gentleman should wound the feelings of anyone he should at once make suitable reparation either by an ample apology or if he feels that circumstances prevent this—that is, if he made charges which he still thinks true—should afford him the satisfaction he desires. I know that a great many men differ with me and look with a degree of horror on anyone entertaining such sentiments. My own experience has taught me that when the doctrine of personal responsibility obtains, men are seldom insulted without good cause and private character is safer from attack; that much quarrelling and bad blood and revengeful feeling is avoided.

I am aware that at times I have acted hastily. I am naturally of a very excitable habit, but it cannot be said by anyone that I ever sought difficulties. I have been exceedingly careful to refrain from giving insults to others and have attacked no man's reputation except when it was necessary in the pursuit of my practice. That my character for honor and integrity is unassailable is shown by the nature of the charges against me. They go back three years for the latest and five or six years for the other charges. Why can they not find some flaw within the past three years?

There is one other charge which as it is written, conveys a gross falsehood and if left unrefuted would rest as a stain on my character. It is this: Resisting a writ of *habeas corpus* by which William Roach escaped from the custody of the law and the infant heirs of the Sanchez family were defrauded of their rights. The facts were as follows: Wm. Roach was appointed by one Josiah Merritt, Probate Judge of Monterey, guardian of the Sanchez children and by a sale of cattle became possessor of over \$73,000 in cash. This money he applied to his own purposes and used as his own, keeping around him and supporting a gang of ruffians who were a terror to the county. He failed to supply the children with necessary clothing or to pay for their education, although having so large an amount of their money in his hands. They were therefore supported by their mother out of her separate estate. One

of them having married Daniel Wilson, applied to Roach for a settlement and the payment of her share of the money in his hands. Roach refused to pay a cent but had the priest who performed the ceremony, arrested, taken before a Justice who belonged to him and fined for marrying a girl under age without the consent of Roach, the guardian, though with the full consent of and approbation of the mother with whom she lived. Roach refusing to make any settlement an application was made to the Probate Court; but here Josiah Merritt being the tool of Roach and in his power did not dare to make any order which Roach did not approve and after various trials by Mr. Yates of San Jose, it was found impossible to get any justice in the court in which Merritt presided. Messrs. Howard and Perley and myself were then employed on the part of the heirs to bring Roach to account. Having satisfied ourselves that nothing could be done in the Monterey courts by reason of the corruption of Merritt and the timidity of the District Judge who was fearful of assassination at the hands of Roach's hirelings, we instituted proceedings before Judge Creanor whom we knew to be fearless, upright and incorruptible. Upon a proper showing and on giving ample security, we obtained an injunction against Merritt restraining him from issuing any orders in the case and an order on Roach to hand over the money in his hands to a receiver for safe-keeping whilst the suit was pending. Roach, confident in his strength and in his power to resist the law in Monterey, refused to obey the order. Mr. Perley was then despatched to Stockton with the proper affidavits showing Roach's refusal, and showing that the sheriff of Monterey refused to serve process on Roach, obtained an order appointing S. H. Brooks special officer to arrest Roach and convey him to Stockton. This Roach had not counted on. He supposed that an order would be directed to his sheriff and he well knew it would not be executed. He was not therefore prepared to resist and late on the evening of Mr. Perley's return Roach, not having time to collect his forces, found himself seated in a buggy and on his way to Stockton. However his friends got a *habeas corpus* from his tool—Merritt—who was a party and had been enjoined in the case. Armed with this document, the sheriff overtook our party at Dr. Stoke's where we were compelled to wait for daylight before attempting to pass the mountain. When I saw the paper I, as a friend of Mr. Brooks, advised him that Merritt had no legal authority to issue the writ under the circumstances of the case and that he ought to disobey it, which he did. I knew that Merritt would not dare to discharge Roach but the object was to get us back to Monterey so that his gang of ruffians could forcibly rescue him. This we prevented and the result was that Roach was taken to Stockton and imprisoned until he was forced to restore a part of the money and from whence after more than a year's imprisonment, he escaped by bribing the jailor it is said, with the assistance of Andrew Randall, who is, I am told, the concoctor of the charge or rather the author of the newspaper paragraph from which it is taken.

And now in concluding this statement I must say that I will show by the testimony of the very best citizens of this or any other country, that wherever I have lived I have in every relation of life so demeaned myself as to enjoy the confidence, respect and esteem of those who knew me; and I further say that I feel proud of the fact that here in California where character is held so cheap and is so often wantonly assailed, where public officers—especially judicial officers—are so frequently accused of bribery, corruption and malfeasance in office; with all the means of information which is afforded by the extensive ramifications of your association; with all the pains which have been taken to pry into my past history and the great latitude allowed in the introduction of testimony, no charge has been made, no facts testified to by a single witness, calculated to throw a stain on my integrity as a judge or my honor as a gentleman.

THE WITNESSES FOR THE PRISONER

Michael Whelan: Am a laborer: Saw on the Saturday the five or so men; only knew Dr. Ashe and Mr. Bowie going up the street and being attacked by another party of men. A tall, dark man that I was told was Judge Terry stepped back and said "he was a magistrate of the law and commanded peace"; then two or three men went in upon him and he told them to stand back, he did not wish to have anything to do with them; then these men surrounded him and first one man grabbed Dr. Ashe's gun and put a revolver to his neck and Dr. Ashe's hat fell off; when the gun was taken from him he said, "it was very hard". I looked around and saw the other stout man; a man had him by the hair or collar, I can't say which.

W. H. Burger: Am in the tax Collector's office. On that Saturday I saw a party of 5 or 6 with guns on their shoulders, recognized Mr. Ham. Bowie only; as I knew him as a Law and Order man. Saw Hopkins

in the rear of the party; a large man was behind the rest of the party. I hurried up and was close along side of Hopkins when he reached out his arm and Judge Terry immediately faced around down Jackson Street; can't tell whether Hopkins struck him or took him by the coat. The gun of the large man was held across his body with both hands. Hopkins said, "we want these guns"; then they wrestled a moment for the gun and Hopkins took his left hand from the gun and shifted to the large man's neck; the large man then said something, but what I could not hear. I then saw a knife appear above Hopkins' head, think in the left hand of the large man; the large man then spoke again, then raised his arm a little higher as if to inflict a blow and Hopkins bent his head, turned it down, still retaining his hold on the neck and on the gun—the blow was given at this time—suppose he saw the blow was coming and turned his head. After the blow was given

Hopkins passed down by me with the gun towards the Pennsylvania engine house; he did not appear conscious that he was much hurt as he turned his head and smiled. When the blood gushed from the wound I saw two persons, one on each side of him, take hold of him and take him down on Jackson street; this is all I know. I went for the doctor first and also for his wife.

Franklin L. Jones: Am a housepainter. Saw the party with guns leave the bank-office building. They were followed by Hopkins and some others but soon others followed to the number of 40. I went with the crowd; as the first lot went on they turned round now and then and beckoned the crowd back, sometimes with the hand and sometimes with a gun. Soon I saw a scuffle. Saw Hopkins seize a gun with both hands and there was a struggle for its possession. He caught the man by the collar or by the ear; then a pistol was fired and there was a general stampede; it left very few people in the street. When I noticed Hopkins again he had the gun and was being led by someone to the Engine house.

John Dunlevy: Am a clerk in the Hall of Records; saw on Saturday afternoon going up the street Ham. Bowie, Judge Terry, McNab, Dr. Ashe and one or two others, one of whom I have since heard was Manuel Rowe. They were nearly all together in a line, Judge Terry being the one behind. I had reached the above place and stood there a second when I saw the man Hopkins dressed in a

blue coat and brass buttons, running up Jackson street. He got nearly in a line with Judge Terry. When I saw him I was between the two and when Hopkins ran past me he brushed me. He had a little stick or switch about three feet long in his hand and he pointed towards Judge Terry and said, "That's him". At the same time he looked towards me. He then said, "take him", with an oath mixed in. He then rushed out into the street and caught hold of the gun in the hands of Judge Terry. I touched Terry on the arm and said, "You had better go away from here." I told him it was a bad place for him in these times. He looked down to me kind of curious (I had never spoken to the man before) as I thought trying to recognize me. I think he said, "I cannot go away" or "Why go away?" He had told Hopkins before I spoke to him that he was a peace officer. I then went to Hopkins (they were scuffling all the time) and put my hand on his shoulder and asked him for God's sake to let that man go and told him it was Judge Terry of the Supreme Court. Hopkins said he did not care a damn who he was. They were still scuffling for the gun. I think it was a rifle. About that time Nugent, a police officer, caught hold of the gun towards the end. I think he said, "what are you doing with these guns?"

Somebody pointed a pistol between me and Hopkins and I struck it with my hand. Just then a pistol was fired behind Nugent who dropped on his knees and I thought he was

shot; saw 3 or 4 pistols in the hands of persons there. I turned and saw a knife in Judge Terry's hand, who was still struggling for his gun. He stabbed Hopkins who ran down the street with his hand on his neck. Judge Terry started up the street with the knife in his hand; thought he was going to stick someone, so I asked him for it. He told me to go away in a very loud tone and seemed pretty angry. The way he looked frightened me more than what he said. I got away very nearly behind him, but five or six feet off on the walk. Then for the first time in the affray I saw Dr. Ashe. The last time I saw Nugent was about four feet from me up the hill; I heard his voice and saw him. Somebody up the street hallooed, "Come to the Armory"; Judge Terry said, "Come up Ashe" and they all started up the street, followed by twenty or thirty or more persons about a yard from each other, all halloing as they went past. Can't recollect the words the crowd used.

John Nugent: In Jackson St. Saturday afternoon I found a collection of people, some of them armed with shot-guns, among them I noticed James McNab, R. Maloney and Dr. Ashe. Heard exclamations of "stand back", "don't come near me" and such like. I stepped towards McNab and began to speak to him to caution him about his gun; I turned and saw a little knot of men in a scuffle, apparently for a gun, which was at that time in the hands of Dr. Ashe; took hold of the gun myself; at the same time Mr. Bovee had his hand

on it and immediately he got possession of it; requested him (Bovee) to give it up to me as an officer, which he did. During the scuffle Hopkins was on the sidewalk engaged in it, apparently for the gun. Did not see and pistol fired nor did I hear any report. I did not see any one with a knife nor did I see any drawn. My whole attention was paid to getting the gun.

Hamilton Bowie: Saturday afternoon mentioned here, I walked over to Dr. Ashe's, the Navy Agent's office and found sitting there the Doctor, Gen. Douglass, Judge Terry and Mr. Maloney. Upon inquiring as to the correctness of a rumor which I had heard about the seizing of some arms belonging to the State, on their passage to San Francisco by the Vigilance Committee, I was informed that it was true; and Mr. Maloney who was then present said that he had come to the office to make his official report to Gen. Howard of that fact; he having been commissioned by Gen. Howard to receive and receipt for the same. Had been sitting in the room about five minutes when a rap was heard at the door and the door immediately opened when Dr. Ashe arose; and the person entering inquired for Mr. Maloney, said "I am the person". The man then said that he wanted him. Mr. Maloney replied "If you want any thing of me I am here, we can do it here". The person then approached him and said that he must accompany him to the Vigilance Committee rooms. Maloney demanded his warrant of arrest and he was told he had none; the person endeavor-

ored to force him along. Dr. Ashe interposed and said that Mr. Maloney was a member of his company of militia of the state, and while in his rooms he was in honor bound as an officer of that company to give him his protection. This person refused to release his hold of him and was eventually coerced to do so and leave the room. Dr. Ashe acting in his official capacity as an officer of the militia then ordered us all to repair with him to the Armory of the Marion Rifles on the corner of Dupont and Jackson streets. We left his office and whilst passing up Jackson street on our way to the Armory four or five of us, Maloney being in the advance of all, myself and Rowe next and Dr. Ashe and Terry in the rear of me, a rush was made by the crowd upon Judge Terry and a cry of "Vigilantes to the rescue!" They endeavored to take away his arms which they succeeded in doing, he being roughly held by some persons and many pistols were pointed at Terry and Ashe. I think I heard the report of two pistols. Then Judge Terry announced himself as an officer of the peace and Judge of the Supreme Court of California and commanded them to desist and leave him alone. They still clung to him until he succeeded in extracting one of his arms with which he drew a knife and used it, as I am informed, upon a person named Hopkins who was still grappling with him. I heard an exclamation, "he has cut me" or words to that effect, whereupon the crowd left; Terry and I and Ashe proceeded to the Armory. Dr. Ashe re-

peatedly exclaimed during the scuffle "For God's sake gentlemen don't use your weapons."

The crowd certainly took hold of Terry; Hopkins seized the gun with one hand and Judge Terry with the other. Did not see Hopkins stabbed.

Dr. Richard P. Ashe: Since May, 1846 Judge Terry and I have been very intimate and I know that as a soldier and patriot he has not a superior and that as a citizen his characteristics are a love for equity and a warm, kind and generous heart. In regard to the matters of yesterday, 21st inst. while he (Mr. Hamilton Bowie) and Mr. Rowe were at my office about two o'clock p. m. Mr. Maloney, who is a private in Company A. commanded by myself through a commission from Governor Johnson under his late Proclamation, came into my rooms to report to me in relation to certain matters connected with his duty as a soldier. The matter was in relation to parties who had forced from his possession arms belonging to the State and also to report the fact of the whereabouts of certain other arms belonging to the State. About this time certain strangers entered my door, one of them approached Mr. Maloney and seized him as a prisoner. I sprang forward saying to them, "I will not allow irresponsible parties to enter my room for search", at the same time shoving the parties out of the door. I then said, "Gentlemen, all go with me to the Armory" and I ordered some one to go and tell Gen. Howard to meet us there. I believed, as I had been expect-

ing, that all of the principal men were about to be arrested and thus I desired to see our general at the Armory. In a few minutes I armed my party as best I could and started with them to the Armory. In the confusion, there being a mob in the streets, I lost sight of all except Judge Terry, though I am convinced Mr. Bowie and Mr. Rowe, one of Gen. Howard's aids, were with us. The mob increased to hundreds, when Terry and myself reached the corner of Jackson and Kearney streets. I exclaimed, "Who are our friends and who are against us?" I was, I considered, in extreme peril of my life. I faced the mob, I think Terry did also and I spoke imploringly to the crowd, "Fellow citizens, for God's sake desist, do not advance on us." We continued to retreat as fast as circumstances would permit, running and wheeling until about half way between Kearney and Dupont streets, where making a momentary stand, still beseeching the mob to desist and they continuing to advance close on our heels whenever we turned. While in this position both Terry and myself were laid violent hands on. I was attacked from the rear while facing the mob down Jackson street. While both of us were scuffling with the parties who had taken hold of us, the mob closed up, while parties had hold of my gun, two pistols, one at each eye, were presented, at the same time all were threatening vengeance and murder. I was disarmed, when throwing me to and fro I saw Terry struggling with several men and I noticed

he was threatened with deadly weapons. Seeing one man present his pistol to shoot him (Terry) and knowing that he was in earnest, as he snapped one cap I screamed, "For God's sake, don't shoot, sir," when he succeeded in firing. A moment after at least one more report was heard by me. Am positive that Terry by this time had taken from him by the officers of the Committee and the mob, his gun and pistol. At the moment after the firing, Terry raised his knife and struck the blow with it. The antagonist whom he struck was the one immediately in front and had him grasped by the breast or throat. Some one cried, "Stabbed" and the man who was stabbed quit his hold and ran down the street.

The pistol shot I spoke of took effect, I have since learned, in Mr. Capprise's coat; Terry and I made our way to the Armory. On reaching there he said "I wonder who I stabbed" and expressed a hope that the wound would not prove fatal and that he had acted solely in self defense, and further said, "Ashe, I saw you reel and thought they had killed you in the fray". On consultation for surrender I said to him "I love you more than ever I did human being on earth" and I told him I would die there with him, selling my life as dearly as possible. His reply was that he was fully aware of my strong regard for him, bursting into tears: "I hate to surrender to a mob but I have only acted in self-defence in every aspect of the case and I will not allow these men (meaning the men of

my company) to sacrifice themselves for me; and I know Ashe, there must be some men on the Committee who are gentlemen and will not, under the circumstances, see me sacrificed". A man named Kelly came to my office one day while Judge Terry was lying on the sofa. He said he had received notice to leave from the Vigilance Committee and acknowledged that he had been instrumental in giving in false election returns. He evidently came for protection. Judge Terry said to him that it was such d—n rascals as he was that people had a right to complain of, who had produced all this trouble and that he ought to be hung. Kelly left and never returned.

John Meyer (butcher), *William Doran* (boarding house keeper), *Edwin A. Rowe* (Governor's Aide), *Atkins Massey*, *Thomas Riley*, *Andrew J. Reed*, *William Dolan* (hack driver), *Thomas Harriman* (hack driver), *Samuel A. Wells* (Minstrel performer) corroborated the former witnesses as to the size of the crowd that followed the Terry party, that they and Hopkins took hold of Terry and that the fleeing party seemed to be acting merely in self defense.

John McMullen: Am a stock raiser. Judge Terry and I went through the Mexican war together and I have stopped with him in Stockton; have never seen him take a drink of strong liquor nor have I ever seen him at a dance house, nor in a house of prostitution, which I cannot say of any other gentlemen of my acquaintance, because in those early days there were no other places to go to. Have

never known him quarrelsome, but on the contrary, generous in all his feelings, liberal to a fault—himself virtuous, yet not prudish to the faults of others. Know a man named Rodhouse slightly only. His reputation was that of a horse and cattle thief. Took from him a stolen horse of mine, with a great deal of trouble.

Was present at the difficulty with Purdy. Terry entered his room, Perley and myself remaining at the door. Terry produced an article asking the gentleman if he was the author of it. He stated that he was not but that he had published it. Judge Terry then demanded the author. He refused to give it to him, saying that it was a private letter. Terry told him he would make him accountable if he did not give the author. He still refused and Judge Terry told him he would chastise him and struck him with a cane. Purdy grappled with him and commenced hallooing, "help! murder." They tussled some time when Terry drew a knife and struck him twice with the butt of it on the head still demanding the author. Perley called out, "Dave, don't cut him" whereupon Terry passed the knife back with his right hand, holding on to the other party with the left, saying, "here, take it." Perley took the knife and Terry struck his adversary once or twice more with his fist. At this time a number of persons had gathered at the door and wanted to come in. Perley told them to keep out. A police officer showed himself at the door with a badge. I told him to walk in, whereupon Perley

objected but as soon as he saw it was a police officer he told him he had nothing further to say, but of course to come in. He entered and arrested Judge Terry who was tried before the Recorder and fined \$300 which money he objected to pay. I told him to pay it and he did so under protest.

D. W. Perley: Am an attorney at law in this city; have been in California since 1849. Knew Judge Terry first in Texas and in 1850 he and I became partners in the practice of the law in Stockton, which continued until he was elected to the Supreme Court. In this state as in Texas, he has sustained the most unblemished character. He is a man of perfect sobriety; he has never been addicted to gambling; has always in this state been violently opposed to that class of men known as "shoulder strikers". They have never been his associates. Has never been a rowdy, street-fighter or bully. Has had some personal difficulties of which I have personal knowledge. At Stockton he was considered one of the best lawyers in the city. He always possessed a large share of the public confidence and had a larger practice than any other lawyer there. He possessed in an eminent degree the respect of the court and of the bar. His private habits were good and in all the higher elements of character it would be difficult to find his equal in that city. Have seen a list of the charges made against him before the Committee and I now allude to such as I have knowledge of. Was present at the time he was said to have com-

mitted an assault on Mr. Evans of Stockton. There was a party of ladies and gentlemen at the house of Mrs. McPherson at an evening party. Whilst the dancing was going on a party of rowdies, loafers and disorderly persons attempted to interrupt the assembly by obscene conduct, by violent and riotous demonstrations at the door of the house and by throwing fire-crackers among the ladies. Dr. Ashe, Sheriff of the county, left the room to restore order and tried to induce the rioters to disperse. A drayman in the employ of Evans was caught in the very act of throwing crackers into the room. Dr. Ashe tried first to induce him to depart. He refused to do so. Dr. Ashe then arrested him for disorderly conduct, when Evans interfered, declared that the man was his drayman and should not be arrested and interfered with the Sheriff forcibly in the discharge of his duty. Ashe then proclaimed to Evans and his friends that he was Sheriff of the county and must not be interfered with. Evans declared "he did not care a damn if he was Sheriff, his drayman should not be arrested" and laid his hand rudely on the officer. It was then a fight, commenced between Ashe and Evans. Some of Evans' friends interfered, and Terry went to the assistance of Ashe, who would have struck Evans with a knife but was prevented from doing so by Terry. In the fight Terry did strike Evans once with his fist. A small brass single-barreled pistol was taken from one of Evans' party by Terry and I think he struck Evans once or twice with it.

Was acquainted with Rodhouse's general character and reputation. It was very bad. He had the reputation of being a bully and a shoulder-striker. Was a quarrelsome and turbulent man—fond of fighting, drinking and carousing and had the reputation of being a cattle thief.

Terry was tried by a jury of the most respectable citizens of Stockton for the assault on Rodhouse and was fined only one dollar. Know nothing of any attack on King of Stockton but have heard that the assault on King was made by Ashe and not by Terry; believe such to be the case and that there is a mistake in charging this matter to Terry.

Have personal knowledge of all the proceedings of Terry connected with the case of William Roach, guardian of the Sanchez heirs. Am amazed at the utter falsity of the charge of his aiding to defraud the heirs. The utter ignorance of that whole proceeding displayed by those who have trumped up this vile slander will be apparent on a bare statement of the facts. Roach had robbed these heirs of about \$75,000. The county Judge of Monterey was his tool and creature; the Sheriff and nearly all the other officers of the county were in the pay of Roach. Terry and myself were employed as counsel for the heirs. No counsel have ever in this state, nor I believe in any other, encountered and overcome the difficulties we had to contend against on behalf of these heirs. Nothing could be done with Roach in the county of Monterey and we commenced

suit against him in Stockton. We got an order from Judge Creanor appointing Louis Belcher (who has been lately murdered by that gang of fellows) Receiver in the case and an order on Roach commanding him to pay over the money. Roach refused to obey and defied the District Court. It then became necessary to arrest him for contempt of court. It was folly to ask any of the officers of that county to do it. In this emergency Judge Creanor appointed Samuel H. Brooks the county Treasurer of San Joaquin, special deputy to arrest him. It was a dangerous and formidable task. No person could be found to act, except Terry and myself, who would join in the party and aid in making the arrest.

We had to rally our firm friends for the occasion and accompanied by the officers and three or four others we arrested Roach at his house in Monterey. Josiah Merritt the county Judge, was charged with Roach as a conspirator to defraud the Sanchez heirs and as soon as Roach was arrested he issued a writ of *habeas corpus* to take him out of our custody. Aaron Lyons the sheriff, was charged as another conspirator and he attempted to execute the process by which Roach would have been set at liberty. He overtook us on our return from Monterey with Roach, and at first threatened to take Roach by violence. Mr. Brooks informed him that Roach was his prisoner under an order from the District Judge of San Joaquin County and he could not recognize the authority of Josiah Merritt who was a defend-

ant in the action, to take Roach out of his custody.

Lyons then asked to see our warrant and on being shown it declared that he was satisfied that we were right and that he no longer claimed the right to execute the *habeas corpus*. We brought Roach to Stockton, he was tried for contempt and sentenced to imprisonment in the county jail until he paid over the money.

Judge Wells then released him on a *habeas corpus*. Terry and myself caused him to be re-arrested and put back in the Stockton jail. He then escaped and tried to flee from the country and after he was gone about three weeks, through our instrumentality, he was captured at the town of San Buena Ventura and again brought back and put in the Stockton jail where he remained about eight months and then bribed the jailer to allow him to escape. He is now an outlaw and felon somewhere in the county of Monterey and has been charged by Belcher on his death-bed with his assassination. In conducting this case Terry and myself risked everything in behalf of the Sanchez heirs—life, fortune and success at the bar. We had to confront and defy Alexander Wells, Judge of the Supreme court in his lawless attempt to liberate Roach contrary to the law. Month after month we braved assassination at the hands of the aiders of Roach.

They did assassinate Dr. Sanford the stepfather of these children and threatened to kill both of us. Through our instrumentality about \$40,000 of the money

Roach had plundered from these children was secured.

Josiah Merritt, the corrupt Judge of Monterey, was driven from the bench and fled from the country and his office was vacated. Judge Creanor and the whole bar of Stockton and Santa Clara are familiar with the assiduous, devoted and untiring conduct of Terry to procure justice for the Sanchez children. To accuse him of conspiring to defraud them is a foul and monstrous calumny.

Was present at the trouble with Purdy and corroborate Mr. McMullen's account of it; remember a conversation about a rumor that Dr. Ashe's room was to be searched for McGowan. I asked Terry what he would do if he was there and any attempt was made to search the room. He replied that the Vigilance Committee had published a statement that no private rooms should be searched except under legal process or by consent of the occupant and that he would resist any attempt to do so, except under a legal warrant or by his consent. I recollect one conversation about a man named Terence Kelly. It was as testified to by Dr. Ashe.

Judge Terry has been generally in the habit of carrying a knife, sometimes a pistol, but that was not his constant usage. I deemed it necessary to carry arms in Stockton in court or out of court, for my protection in defending or prosecuting criminals. The life of an attorney was in constant jeopardy. Up to the time I left Stockton it was the usage and custom for the majority of the people to carry arms. Have never lived

in Sacramento but think it was much the same way. Judge Terry did not to my knowledge go on the Supreme Bench armed. All the difficulties spoken of occurred prior to his being elected Judge of the Supreme Court. Have never known of any difficulty since of any kind or character until the present.

Samuel Neall: Knew John Hanna well in Stockton, where I was a court officer; knew of him being guilty of commercial frauds. He was embittered towards Judge Terry because the latter advised a suit against him for slandering a lady. Hanna has told me that he could put a halter around Terry's neck and that there was a day coming when he would get even with him. From the knowledge I have of Hanna's known antipathy to Terry, I would not believe him on oath in what he would say. I assisted summoning the jury that tried Terry for the assault on Rodhouse and it was composed of some as respectable citizens as any in Stockton. I copied all the papers in the Roach case and know all the particulars about it and I know that the Sanchez children received \$40,000 by the aid of Terry and Perley their counsel. Have known Judge Terry since 1850 and lived in the town of Stockton where he resided from that time until his election to the Supreme Court. I know him to be a brave, noble, highminded, generous man. Never heard his honor doubted and he bore the universal reputation of being an honorable man as well as a peaceable one.

J. K. Shafer: Have been County Judge of San Joaquin

County since 1854. Judge Terry frequently appeared in my court in cases as counsel in Stockton. His reputation for honesty, truth and integrity is equal to that of any man in the State. I do not regard him as a quarrelsome man. I have never known him to quarrel at all. What I mean is that he would not go after a man to insult him, but if insulted would resent it promptly. I know of one or two instances in which Judge Terry told men to go away as he did not desire to have any words with them. I was the District attorney that prosecuted Judge Terry for the assault upon Roadhouse. In Feb. 1851 Judge Terry had brought a suit against Roadhouse who had no counsel but attended to his case in person; when Judge Terry was addressing the court Roadhouse interrupted him and afterwards used words to the effect that what Judge Terry had said in his arguments was a lie. Terry immediately turned around. Roadhouse who was standing behind him, put himself in position and I think advanced and said, "I am ready for you" and brought up his fists and Judge Terry drew a knife and cut him on the shoulder blade. Roadhouse's reputation in San Joaquin county was not good. Have heard it said and never contradicted, that he was from Sydney and was a shoulder-striker. It is my impression that Terry sent or tried to send a doctor to Roadhouse. Am sure that there is testimony that Terry said, "I hope I have not hurt him much." I corroborate the Evans trouble as related by Mr. Perley.

R. F. Langdon: (he corroborated Mr. Perley as to Judge Terry's action in the case of the Sanchez heirs.) I met John Hanna first on the steamer from New York here in 1849. At Panama there was some excitement which I learned was because Hanna had left the hotel without settling his bill and that the keeper of the hotel was endeavoring to collect it. During the entire passage up to San Francisco Hanna was continually gambling and was the companion of a notorious gambler, shoulder-striker and prize-fighter—one Jack Smith who was killed in San Francisco in a fight.

Samuel H. Brooks: Am Treasurer of San Joaquin Co. Since 1851 I have been intimately acquainted with Judge Terry. He had the largest practice in Stockton and possessed the confidence and respect of the community. Have never known of his having fights, public rencontres or street brawls; has never been a gambler and has always been opposed to pugilists, ballot stuffers and shoulder strikers. He would be quick to resent a personal insult but does not harbor sentiments of malice or revenge. He is incorruptible and devoted to his family. He did formerly carry a knife all the time but of late years he has discontinued that habit and has only carried a knife or pistol when he went away from home or was engaged in professional business where personal danger was to be encountered. Know that he has not been in the habit of wearing arms about his house or in the streets as a general thing for the last two years.

Have never known him to cut or shoot any body. Have heard of some few personal difficulties he had had, none of which were of a serious or aggravated character; know nothing personally of such difficulties.

The facts as I know them in relation to the Sanchez heirs are correctly stated by Mr. Perley.

F. E. Corcoran: About May, 1852, an election was held in Stockton for city officers. After the polls were closed I was standing near by conversing with Dr. Langdon when one Austin M. King came up and stood listening to our conversation. Presently Dr. Ashe joined us, some words ensued between Ashe and King. King struck Ashe; they then clinched and struggled in the room. Ashe had a knife in his hand. Terry who was also present, exclaimed, "Don't cut him, Ashe", and then seized Ashe's hand and held him so that he could not use it. The parties were then separated. Have known Judge Terry personally since 1850; regard him as an honorable, though impetuous man.

James G. Baldwin: On the Wednesday preceding this occurrence, I called on Judge Terry at Dr. Ashe's to persuade him to leave town; told him he had done all he could and should abandon any further resistance to this popular movement. He seemed impressed and I think my appeal would have been successful, but for the ill-timed and intemperate appeal that Dr Ashe made to him on what I considered a false sense of honor.

Calhoun Benham: I went with other citizens from here

to Sacramento to inform the Governor that the city was in a state of insurrection. Called at the rooms of the Supreme court and Judge Terry went with us. Gov. Johnson told us that Terry was going down to issue a writ of *habeas corpus*. He said he desired to have all the right on the side of the Executive; understood that he did not wish to act at all until he had a complete case and that it was necessary that Terry should come. In the interview with Terry, before the latter saw Johnson, I urged him as earnestly as it was in my power to assist in procuring the proclamation and taking such steps as might seem best to break up the Vigilance Committee.

I told him that it was expected from him by many others beside myself and that it was important to have his influence. A day or two before the incident in regard to Hopkins occurred, Terry told me he was going home; that the game was lost for the present. I told him no, and he didn't go. I thought he would go next day, but on the morning after when I came to town I found he had not gone. This was the morning the incident in relation to Hopkins occurred. I understood he remained at the solicitation of the friends of that party.

A. C. Baine: Am a lawyer in Stockton. In my practice I have been brought in constant collision with Judge Terry, as well as in contact with him in social intercourse. Have never met a more upright and courteous gentleman. So far from his being a bully, I consider him a magnanimous man. By this I mean

that if an equal in physical strength were to insult him, he would be quick to resent it; or if a ruffian shoulder-striker, to whose skill he was unequal were to do so he would in a moment attempt his castigation; while if a man much his inferior in position, strength or skill, were to offend him in the same manner, he would let it pass unnoticed. I have seen this.

His zeal and fidelity to the interests of his clients are worthy of his profession.

Charles M. Creanor: Am Judge of the Fifth District; have known Judge Terry intimately since 1850. He is temperate, highminded and honorable. He is not quarrelsome but is passionate and quick to resent an insult. Never saw him have but one difficulty in my court. Mr. Hall gave him the lie; they clinched, a tussle took place, think no blow was struck; they were separated and arrested by my order. Everything in the court-house was settled in two minutes, and Mr. Hall going on with his argument. My opinion is, and I think it is that of the bar in my District, that he was a perfectly fair practitioner and resorted to no unfair means or tricks in his practice.

Terry, the counsel for the heirs of Sanchez, so far from aiding Roach in his escape, did all in his power to keep him in prison, which was done for a long time until he broke jail.

R. W. Heath: Was a resident of Stockton when the prisoner came there. The largest portion of the population was in the habit of assembling daily and

nightly in bar-rooms and gambling houses; indeed they were the only places to meet strangers or acquaintances, and it was not at all unusual to transact every variety of business at the bar. Cannot recall having seen Terry but once at any of these places, and I was a frequent and constant visitor. His character and conduct was most unexceptional and irreproachable; indeed his habits, so different from nine-tenths of the population, attracted much attention and remark.

At this time three-quarters of the population carried arms and it is probable that judge Terry did, though he certainly never carried them exposed as did many others; have seen a drayman in the streets with a revolver buckled on and I employed a carpenter to build a house for me who was seldom without the same weapon even when at work. Merchants were often armed when behind the counter attending to their business. Judges, jurors, lawyers and witnesses were often armed in court.

J. C. Hays, H. A. Cobb, Sam-

uel L. Jones, Richard Roman, William H. Rhodes, John H. Brown, Lewis B. Harris, Henry Hubbard, Henry T. Huggins, Dr. Isaac Zachariah, D. J. Staples, John A. Reed, Thomas Marshall, A. C. Bradford, T. R. Bours, B. W. Bours, Samuel Knight, Samuel Purdy, Richard P. Hammond, A. P. Crittenden, W. W. Porter, John Hodges, Jr., G. A. Shurtleff, Tod Robinson, G. W. Wood, all of whom had known the prisoner for many years, testified to his high character and reputation in the community, to his honesty and lack of vices and his eminence as a good citizen.

Isaac S. Freeborn: Have known both Judge Terry and John Hanna for years. Since 1851 Hanna has been an enemy of the Judge's; have frequently heard him speak of him in the most unfriendly terms, using the most opprobrious epithets, and expressing a disposition to shoot him. Judge Terry being a high-toned man, holding in destation small and petty tricks, it may be that he reprobated Hanna for his conduct and so gave rise to this ill feeling.

THE PROSECUTION IN REBUTTAL.

H. Mitchell: In a suit in San Joaquin Co. in 1851, in which I was a garnishee, Terry declared that one of the witnesses named Jackson had sworn to a lie, at which Jackson said he had sworn to nothing but the truth; upon this Terry picked up a chair and commenced beating Jackson unmercifully. Justice Woods fined Terry a nominal sum, one dollar.

J. C. Westbay: In 1851 I was

a witness in a case against Roadhouse. Terry was for plaintiff and when speaking Roadhouse arose and remarked that Mr. Terry was mistaken in regard to some of his statements, upon which Terry drew a bowie knife and without waiting, immediately stabbed Roadhouse, who did not make any attempt to draw a weapon or make any demonstration to attack Terry.

John Wilson: At the election for sheriff in 1851 in the county of San Joaquin, Dr. R. P. Ashe was a candidate. D. S. Terry, Col. Cheatham and D. W. Perley went to the polls about an hour before the closing and took the ballot-box from the judges and inspectors and swore that there should be no more votes polled that day, although there were a number then waiting to vote, and that they would protect the ballot-box. Terry took an active part in the proceedings and appeared to be the principal man among them.

Russell K. Rogers: In July, 1852 I boarded at the Stockton House. The keeper of the house, Sinck, had a difficulty with a gambler and a man named Brooks. The day after the dif-

ficulty (which took place at a ball-room) I was in the hotel when Sinck was behind the bar and Brooks and Terry came in and commenced an assault upon Sinck. The first I saw was a cane thrown by the gambler at Sinck which passed over my head as I sat at dinner in the dining room, Sinck having left the bar-room to go across the dining room for his pistol which he had brought back by another door into the barroom where Brooks and the gambler were with drawn pistols. As he (Sinck) entered Terry took hold of him, at the same time drawing a knife and told Sinck that if he did not drop the pistol he would have his heart's blood, when the matter ended with a war of words.

Mr. Smiley read the warrant issued by the Executive Committee on June 20 for the arrest of Maloney and Phillips. It was found in Hopkins' pocket after he was stabbed.

Charles Poppe, Isaac Wormser, Adolph Sutro, residents of Stockton, testified that Terry always carried a knife, was quarrelsome, quick to take offense and to take revenge and asso-

ciated with gamblers and bad men. This was his reputation.

W. E. B. Andrews and *Augustus Elliott*, testified to the good reputation for truth and veracity of Sterling A. Hopkins.

THE DEFENSE IN REBUTTAL.

E. A. Rowe (recalled): Did not see any knife in Judge Terry's hand while Hopkins was in Dr. Ashe's office. After he left the Judge put on a belt with a pistol and knife in it.

R. P. Ashe: (recalled) Am sure Terry did not have a knife in his hands while Hopkins was in my office; am sure his arms were in his valise at the time, ready to take back to Sacramento.

Samuel Langdon, Loyd Tevis,

Chas. De Ro, testified to the bad reputation of John Hanna.

Archibald McPherson corroborated Perley's account of the Evans' incident as also did *R. P. Ashe.*

Samuel Langdon, J. E. Nuttman and *James Lynch* contradicted *John Wilson* as to the Election incident (*ante* p. 163).

G. W. Wood: Was the judge before whom the case against Roadhouse was tried. He behaved with great disrespect to

the Court and to Terry, the opposing counsel. I fined him for contempt of Court, ten dollars, which he threw down in an insolent manner on the table and swore: By "G—— he had money enough to pay all his fines." I then fined him twenty dollars more. He then seized the ten dollars he had thrown down and swore he would pay no more fines whatever. I then threatened to send him to jail if he did not behave in a proper manner, to which he paid no attention.

By this time Terry had commenced an address to the jury and he was commenting on the evidence when Roadhouse interrupted him and accused him of making false statements. Terry then remarked "Do you mean to say I am a liar?" Roadhouse replied, "I do" and put himself in a boxing attitude, Terry also throwing up his hand, when Roadhouse cried out, "Come on I am ready for all your sort". Terry then drew a knife and inflicted a slight cut, on his shoulder. Roadhouse ran out of the Court house and Terry sent Dr.

O'Neill after him, expressing the hope that he was not much injured and requesting the doctor to see and dress the wound and he would pay him. I fined Terry for this assault fifty dollars which he paid. Fined Roadhouse fifty dollars which he never did pay. I state positively Roadhouse was the aggressor and insulted Terry grossly for which, if a constable had been present, I should have sent him to jail. Roadhouse was a man of a turbulent and violent disposition; he had a bad reputation, that of an overbearing, quarrelsome man. Have heard him accused of harboring cattle thieves and of associating with disreputable characters. He is an Englishman; went generally armed with a revolver and had frequent disputes with teamsters and others.

E. F. Bunnel, J. C. Maynard, R. McMillan, J. C. Pelton, J. W. Coffroth, Jeremiah Clarke, E. F. Child, testified that the reputation for truthfulness and honesty of Hopkins was bad, and that they would not believe him under oath.

THE VERDICT AND JUDGMENT

July 19.

Today the Committee rendered its verdict which was as follows:

- 1st Charge: Guilty.
- 2nd Charge: Guilty of assault.
- 3d Charge: Not guilty.
- 4th, 5th and 6th Charges: Dismissed.

August 7.

Today David S. Terry was brought before the Committee and the Judgment of the Committee read to him, which was in these words:

That David S. Terry having been convicted, after a full, fair and impartial trial of certain charges before the Committee of Vigilance, and the usual punishments in their power to inflict not being applicable in the present instance, therefore be it declared the decision of the Committee of Vigilance, that the said David S. Terry be discharged from their custody.

Resolved, that in the opinion of the committee the interests of the State imperatively demand that the said David S. Terry should resign his position as Judge of the Supreme Court.

THE TRIAL OF EDWARD McGOWAN FOR THE MURDER OF JAMES KING OF WILLIAM, NAPA CITY, CALIFORNIA, 1857.

THE NARRATIVE

In the Spring of 1857, Edward McGowan, who ever since his indictment as an accessory before the fact to the murder of James King of William, had been a fugitive from justice, returned to San Francisco and through the action of a friendly legislature his trial was removed to Napa county.

There is little doubt that he knew at the time that Casey intended to attack King, and that he was much pleased at the result—his own words in his celebrated Narrative¹ prove this much. But nothing was shown at the trial to prove him in any proper sense of the term an accomplice in the murder. But he soon became aware of the fact that he was in danger and secreted himself. Searches were instituted and large rewards offered for his arrest and delivery to the committee. But he managed to escape and his adventures as a fugitive and the vain chase after him form a very remarkable episode in the history of the Vigilance Committee.

Even had the proof been sufficient to show his guilt, his acquittal was almost certain. He was in a friendly community where there seemed to be a deep prejudice against the San Francisco Vigilance Committee. Every man who had any

¹ In his Narrative (*post* p. 167) he says he entered political life in 1837 and in 1838 was elected Clerk in Philadelphia, holding the office for six years, being at the same time clerk of the county Board. In 1842 he was elected to the Pennsylvania Legislature and in 1843 appointed Superintendent of the State Magazine. He was then for several years a Superintendent of Police in Philadelphia. He came to California in 1849 and held many public offices including that of County Judge.

sympathy for that organization was carefully excluded by his lawyers from the jury and the twelve men were easily persuaded that it was what his leading counsel called "a ren-counter", that is to say, a street duel and that Casey was guilty of manslaughter and not of murder. And as the judge had instructed them that there could be no accessories in manslaughter, the verdict of not guilty followed as a matter of course.

THE TRIAL.²

*In the District Court of the Seventh District, Napa City,
California, May, 1857.*

HON. E. W. MCKINSTRY,³ *Judge.*

May 29.

An indictment had been found by the grand jury of San Francisco, charging Edward McGowan with being an accessory to the murder of James King of William, by James P. Casey, (see *ante* p. 105). The prisoner immediately fled from the city and continued in hiding in a remote part of the State until February 21 of this year when he surrendered to the

² *Bibliography.* "Narrative of Edward McGowan, including a full account of the Author's Adventures and Perils while persecuted by the San Francisco Vigilance Committee of 1856. San Francisco: Published by the author. 1857."

"Narrative of Edward McGowan, including a full account of the Author's Adventures and Perils while persecuted by the San Francisco Vigilance Committee of 1856. Together with a Report of his Trial and Acquittal. Reprinted line for line and page for page from the original edition, published by the author in 1857. Complete with Reproductions in Facsimile of the Original Illustrations, Cover, Page Title and Title Page. San Francisco, California. Printed by Thomas C. Russell, at his Private Press, 1734 Nineteenth Avenue, Sunset, 1917. This is a limited edition of 200 copies."

³ MCKINSTRY, ELISHA WILLIAM (1824-1901). Born Detroit, Mich. Grad. Kenyon Coll. and admitted to N. Y. bar, 1847; removed to California, 1849 and practised in Sacramento and Napa. District Judge 1852-1862; removed to Nevada but returned to San Francisco, and was elected County Judge, 1868; Judge Supreme Court 1873-1888; Professor of Law Hastings Law Coll.; President Society of California Pioneers. Died San Jose, Cal. See Soc. Cal. Pioneers Report July 1, 1902.

authorities at Sacramento. On March 9, an act was passed by the State Legislature giving power to the courts to grant a change of venue in a criminal case without the prisoner personally appearing in court, under which law JUDGE HAGAR⁴ transferred the indictment to, and ordered the trial to take place at, Napa City.

The trial began today: the prisoner being arraigned and pleading Not Guilty. *Henry Edgerton*,⁵ District Attorney, *A. M. Heslep* and *Henry S. Foote*,⁶ for the State: *Mr. Botts*, *James W. Coffroth*⁷ and *Jack W. Smith*, for the Prisoner. The following jurors were empaneled and sworn. Robert C. Gillespie, William Hargrave, David Hudson, George Ware, Morris Twist, Wm. H. Younger, Charles McBride, Peter D. Bailey, Ralph L. Kilburn, Harrison Hornback, James Glassford and Charles Stillman.

Every man who had ever expressed an opinion in favor of the Vigilance Committee was excluded from the jury by the defense.

May 30.

Mr. Foote opened the case to the jury.

⁴ See *ante*, p. 19.

⁵ EDGERTON, HENRY (1830-1887). Born in Vermont, Settled in California, 1853. State Senator, Napa Co., 1859, Removed to Nevada, 1863 but returned to Sacramento 1865, State Senator, 1873-1878. Died in San Francisco.

⁶ FOOTE, HENRY STUART (1800-1880). Born Fauquier Co. Va. Grad. Wash. and Lee Univ. Admitted to bar, 1822: removed to Alabama where he practised law and edited a newspaper: removed to Vicksburg, Miss. (1826) where he established the *Mississippian* and became a leader in Democratic politics; Member State Legislature 1839: United States Senator, 1847-1852: Governor of Mississippi, 1852: At end of term removed to California, but returned to Mississippi in 1858 and afterwards settled in Tennessee: Member of Confederate Congress. After the war became a Republican and was appointed by President Grant, Director of the New Orleans Mint. Wrote several books, among them "Bench and Bar of the South west" (1876).

⁷ COFFROTH, JAMES W. (1829-1872). Born Franklin Co., Pa. Learned the printers' trade and published a newspaper in Phila. until he removed to California and founded the *Sonora Herald*; Member State Legislature (Twolumme Co.) 1852; State Senator 1853-1857; Died in Sacramento.

THE WITNESSES FOR THE STATE

Lafayette M. Byrne: Was deputy sheriff in San Francisco last May. Saw Casey shoot Mr. King and arrested him and took him to the police station.

Mr. Botts: We object to this evidence unless it is intended to be shown that McGowan was near enough to aid in the assault.

Mr. Foote: We expect to prove that McGowan was in a convenient place to render assistance, that there was a confederacy between them.

Mr. Botts: It must be proved that McGowan was prepared to aid in the murder, if necessary, as well as on the scene of action in order to render the proof of a blow from a confederate, relevant.

Mr. Foote: We come prepared to come up to the requirements of the law.

Mr. Byrne: I was not on particular friendly terms with Casey. Have no knowledge as to his shooting propensities.

Cross-Examined: Have known prisoner five years; did not see King's hands, they were under his talma; had not seen prisoner for two or three days before and not till the day after the shooting.

James W. Stillman: Was at the Bank Exchange about five on May 14, 1856; heard the shot but did not see the shooting; went out of the door and saw Casey stooping to pick up a talma; ran to King and helped him to the express office; he said he was hurt; groaned as we mounted the steps; we put him on a mattress; I unbuttoned his clothes

to find the wound; told him the wound was not mortal; don't profess to be a medical man; several doctors came and took charge; took a pistol from his pocket.

Cross-examined: The pistol I found on Mr. King was a small revolver; didn't notice if it was cocked; told him not to be frightened. He appeared very much alarmed. Did not see McGowan.

Dr. Toland: Was sent a message to visit Mr. King at the Express office about ten p. m. May 14; there must have been twenty physicians in the room. Dr. Hammond had charge, his family doctor; his extremities were cold, very little pulse and vomiting; they were administering stimulants to bring on a reaction; remained for a time and then as there were enough physicians there, left; Drs. Hammond, Bertody and Gray were in charge. Returned at seven next morning, reaction had been partly established. We removed him to Montgomery Block; made a thorough examination that afternoon, concluded to allow the sponge in the wound to remain for fear of return of bleeding if it was withdrawn: the posterior wound was the largest; a cold compress was applied and a tourniquet to compress the artery. The third day found him worse; other doctors were called including Drury Griffith; he opposed the removal of the sponge; on the fourth day we opened the entire armpit to allow the matter to escape, but found none; his symptoms became gradually unfavorable,

though he had been getting worse from the fourth day; he died on the sixth afternoon; told Dr. Hammond that morning that he had phlebitis, suggested for consultation Dr. Hastings and others. Thought the sub-clavian vein was injured: but the ball had not touched the vein; there was inflammation of the pleura; his prostration was great. Thought he would die two hours after the injury. After such a wound as this the patient usually becomes faint and vomits and if reaction does not come on in an hour or so he dies as a rule. Reaction in King's case was never fully established; it is not advisable to make examination until reaction, unless to tie a vein; his lungs were in a bad state, tubercular masses in the chest.

He was in bad health evidently, when he was shot; his chances of recovery were smaller than that of a healthy person. The inflammation of his veins extended to his heart. There was nothing in his treatment to induce venous inflammation; that came from the wound; this was the cause of his death. His treatment was correct: I have nothing to regret.

Have had a good medical education, graduated in Kentucky, then studied in Paris; have had a large practice for years.

Cross-examined: The room in the express office was warm, but in May it is usually raw and cold in San Francisco; when I arrived the wound was bandaged and a sponge had been introduced; (here the witness made a long explanation and description of the treatment and

the state of Mr. King on the several days. (See *ante* p. 169). Phlebitis is inflammation of the vein; have known few recover from it: there is more danger in closing a wound than in keeping it open. Cold water we frequently applied. But for the partial reaction Mr. King would have died the first night: we gave him chloroform to ease the pain.

Orlando C. Osborn: Saw Casey shoot King and pick up a coat; he held a revolver in his hand. Some persons came up and ushered Casey across the street; one of them took his revolver: or rather Casey dropped it in his pocket; it was yellow mounted.

Cross-examined: Can not describe the pistol except that it was yellow; did not see the muzzle.

Charles Burroughs: Saw McGowan between six and seven on evening of May 14 and talked about the shooting. He said nothing to me then or afterwards as to his knowledge of Casey's assault.

Jacob Curtis: Met prisoner on 14th May on Montgomery St. and he introduced me to Mr. Wightman. He asked us to drink and we went into Dan's saloon; it was about four thirty; I took a brandy punch, Wightman lager beer and McGowan a gin cocktail. A lad came in and told Wightman he wanted his pistol. He took it out and laid it on the counter; I said "it's a noble pistol." "Yes" he replied, "it will shoot a hundred yards." The boy went off with the pistol and then he asked me "don't you know Jimmy?" I said I knew

him by reputation; then either prisoner or Wightman said "We'll go out and see what they want of us"; we went out and I left them but later heard a report of a pistol and saw a crowd running to the express office. Between the time I left McGowan and the pistol shot was from eight to ten minutes. Didn't notice which way they went; the pistol was a colt navy revolver. Nobody but the boy came into the saloon to speak to them.

Cross-examined: Am 53; born in New Jersey; came here in 1850; am in the lumber business; was a member of the Vigilance Committee. Am sure it was after four o'clock when I met prisoner; Dan's place is between Commercial and Clay Sts. Considered McGowan one of my friends; never saw the boy before; he said, "Casey wants Wightman's pistol," he also said, "You are wanted." I said, "better be careful who you let have it," then he asked me, "don't you know Jimmy?" Can't say if it was yellow mounted; when they went out they said they were going to see what Casey wanted; did not see which way they went, it was not the Bank Exchange where we were, but Dan's saloon. Think I talked with Buffum at Napa Springs about a week ago; don't think I said to him it was of no use my being here as Butts knew all about the case; Butts I know says I am mistaken and that the affair took place at the Bank Exchange; did not tell Buffum that Butts lied, we tell the same story except as to the place; was annoyed at being brought up here; did not tell

Buffum it took place at the Bank Exchange.

To Mr. Foote: All I know about Butts is his testimony before the grand jury; thought he swore the same as me.

Mr. Botts objected.

Mr. Foote: In justice to the witness who has been called a liar, he should be allowed to proceed.

Curtis: Supposed his testimony before the grand jury was the same as mine, that he swore he was the lad; so I thought mine might be dispensed with.

Andrew J. Taylor: Am a dealer in fire arms in San Francisco; on the morning of May 14, I loaned prisoner a navy pistol and a knife; loaded it and also a Derringer for him. The Derringer he brought with him; it was gold mounted; did not see Casey that day.

Cross-examined: It is usual for me to load pistols for people, demands are frequent. Been in that business a long time; have loaded them for James King of William's brother. People come to me frequently and discharge their pistols and have them reloaded; McGowan has had me reload his for 4 years. Wearing arms is common in San Francisco; the leading citizens do so.

John Butts: On May 14, saw Casey and McGowan an hour before the shooting; was sitting in the window of the Bank Exchange when Casey came up and asked me to tell the man with McGowan to come out; I did so; told Mr. Wightman that Casey wanted him and he and prisoner went out; was on the street after with a boy, George Winslow, when I saw the shooting.

Heard Casey tell King he was going to shoot and immediately he fired, his coat falling off meanwhile; could not tell whether King tried to shoot or not, he was walking with his arms partly folded. Casey was arrested by Mr. Byrne and Peter Wightman was beside him too. I was afraid and fled, it was the first man I ever saw shot and it made me nervous. Last time I saw Casey he was hanging out of the window of the Vigilance Rooms; have not seen Wightman or prisoner in San Francisco since the Vigilance Committee began. When prisoner came out of the saloon, on the street he talked with Mr Hamilton Bowie.

Cross-examined: The corner where I was when King was shot was a loafing corner; I had

nothing to do those days and was loafing there; had read the piece in the *Bulletin* and was waiting the result; was never before anybody but the Vigilance Committee; have been in prison lately but the police take us out and make us work; was taken up for stealing money and a leg of mutton, did not steal the money, but Judge Coon was rather excited and sentenced me.

Henry H. Byrne: Do not know as to the familiarity of prisoner with Casey, as I am little in the street; knew that they were acquainted but do not know their political operations.

J. M. Warner: McGowan did not make any declaration to me concerning this affair; did not tell me that he saw Casey making his will.

THE WITNESSES FOR THE PRISONER

General James Estell: I saw King shot; had not heard of the difficulty between them before that, as I had not read that day's *Bulletin*; first heard Casey in a short and excited and angry tone call out, "Come on, come on." Looked and saw King about the middle of the street facing Casey both in rather a defiant attitude; King had his arms folded; they were about 100 feet apart and both wore short cloaks or talmas. Casey approached rapidly, asking in a sharp, excited voice, "Are you armed?" Immediately after he said "defend yourself" or "prepare to defend yourself", let his talma fall and raised his right arm which held

a cocked revolver and fired. Mr. King who had made no reply that I heard, received the ball in the left breast or shoulder, cried out, "oh Lord" several times and walked to the Express Office saying, "oh, my arm." Casey then recocked his revolver, walked towards King, then stopped, hesitated, picked up his cloak; next I saw two men, one Lafayette Byrne seeming to be arresting him; Casey after some little resistance, submitted; the parties were about 45 feet apart when Casey fired. King had ample time to fire after Casey first called out to him. Don't know whether Casey's first call attracted King's attention.

Mr. Betts: Do you know whether King had publicly proclaimed

his readiness for such an encounter as this? The State objected to the question and was sustained by the COURT.

Mr. Botts: Was the action of Casey on this occasion that of a fair and honorable combatant? Objected to and objection sustained.

Mr. Botts: What was difference in size between the two?

Mr. Foote objected.

Mr. Botts: I contend that the question is a proper one. I expect to prove that at the time Casey was smarting under an insult, not improperly resented by a rencounter of this kind.

Mr. Foote: Unless you prove an offensive position on the part of King, the question is not proper. If you wish to show an insult given to Casey I have no objection to the question, as I deny that he was ever wronged by Mr King or that the latter ever did anything but what was demanded by him as an editor, by the public.

Gen. Estell: Casey was a small man physically, and in stature; he weighed I should say about 130 pounds, but was muscular and active. Mr. King was six feet tall and weighed I should judge 190 pounds at least, with rather an uncommon degree of muscular strength and power. As Casey fired, saw Mr. King turn his face slightly and shove his arm down in his vest.

Cross-examined: Did not know that Mr. King was in poor health at the time; did not know that one of the men that took Casey off was Wightman. Saw Andrew Hebron, a butcher there; no one else until after the firing when I recognized ex-Mayor Webb, Wm. Neely Johnson and most of my acquaintances in the crowd, also I think Mr. Bowie. Know Dan's saloon; often went in there to drink.

To Mr. Botts: Dan's is not a lager beer saloon, never saw lager beer served there; the high class saloons in the city do not serve lager beer.

William F. Williamson: Saw King after he had been shot; saw a sixshooter in his pocket, on the left side.

Cross-examined: The noise

of the pistol carried me to the spot; expected there would be trouble that day; saw McGowan when I saw Casey and Tom King talking. Vi Turner was near us; was not there as a friend of Casey to hear the conversation; McGowan wore a white hat.

Alexander Dodge: On the evening of 14 May was in San Francisco; was with McGowan from five minutes to four until twenty minutes to five; was in Justice Ryan's court with him. We went out twice to take a drink; some one asked him had he seen the *Bulletin*; said he had not and the gentleman passed it to him to read; then we went to a saloon next to the *Bulletin* office and he left me there; last time I saw him was two days after.

Cross-examined: McGowan was half a block from Dan's saloon when I saw him last that day; know the times I met and left him by my watch which I looked at; after he read the *Bulletin* he said Casey would take care of that; he wore a white hat and mustache; have talked to people today about my testimony.

Gilbert A. Grant: Saw prisoner on May 14 about half past four on Merchant St. with a gentleman; can't say it was the last witness. I was standing at that time with several persons talking with them about an apprehended difficulty between Casey and Tom King when McGowan and his companion passed and one of our crowd called to him "come over, something is out;" it might have been twenty minutes after four; a little after Casey came down Montgomery St. and we heard a pistol shot and ran down; it was ex-Mayor Webb told us that King had been shot; think this was after five o'clock; don't know Peter Wightman.

Cross-examined: Think it was half after four when McGowan came down the street and the shooting occurred five past five; did not look at my watch. McGowan wore a white hat, green pants and black coat. Casey and he did not affiliate politically; they may have been intimate for aught I know.

June 1.

John Nugent: Was a police officer on May 14. Saw prisoner about 5 on Washington St.; was with him about five minutes; did not see Mr. Bowie. The rencounter took place while I was with him.

Cross-examined: No one was with McGowan when I saw him. Did not look at a clock; knew the time by hearsay; think Stevenson told me a man had been shot. Left him in Kearny St.; don't know which way he went; have seen him in prison nearly every day; have not told any one that I would clear McGowan, that everything was fixed to

clear him; am an old police officer; my business is to hunt down persons accused of crime; generally get a fee outside my regular pay. Was 400 feet from the place King was shot. Did not know of the difficulty between Tom King and Casey.

Samuel Stevenson, a police officer, confirmed the testimony of the last witness.

James McNab: Saw Casey on May 14; he was in the neighborhood of the Natchez shooting gallery about four. He went in there; after 15 minutes he came out with a pistol bulging out of his coat.

Cross-examined: Both Natchez and Taylor have told me that Casey was not in their places that day. Told Taylor I thought he was mistaken. Have been intimate with Casey for years; expected a difficulty between him and Tom King. Went up to the jail that night to help guard it; heard it was to be attacked. Was one of the proscribed in San Francisco. Am the man who engaged with Maloney to get the arms.

To Mr. Botts: Was kept aboard the revenue cutter for 8 weeks; Captain Ashe sent me for arms, but I was resisted by the Vigilance Committee; I sympathized with the other side.

E. G. Buffum: Saw Curtis at Napa Springs a few days ago; he complained at being brought here; said there was no necessity for his testimony as Butts would testify to all he could; think he said he was with McGowan in the Bank Exchange when Butts came in.

Dr. B. Cole: Am a practising physician. Graduated from the

Jefferson Medical Institute in 48. Have been practising in San Francisco since then; saw Mr. King 7 minutes after he was shot; examined his wound; heard Dr. Toland's testimony. In my opinion the wound was not necessarily a mortal one. I think the treatment was of such a character as to make it a mortal wound or in other words to cause death.

Cross-examined: Saw King's wound soon after it was inflicted; introduced my finger, venous blood issued. It was an inch and a half below the clavicle. I was the first to discover the posterior wound (witness produced a skeleton to illustrate); it was evident the artery had escaped; objected to the introduction of the sponge; thought it improper; preferred lint; was

not present at the post-mortem. The application of the tourniquet was improper and injurious; Dr. Toland's reputation in the community is one thing, his reputation among the medical profession is another thing. I am almost exclusively a surgeon. The sponge came in contact with the vein and retained poisonous matter; suggested its removal several times; there is no profession in which there is more rivalry than the medical, unless it is the law; have lectured on this case; my reason was to promote the truth; withdrew from King's case on account of the discourtesy of the attending physicians; was excluded from the post-mortem. Am surgeon of the grand marshal's staff and surgeon general of the Vigilance Committee.

THE SPEECHES TO THE JURY.^s

Mr. Botts: Gentlemen of the Jury: I was informed during the progress of this trial that it had pleased one of the gentlemen who represent the state to remark that he had observed symptoms of anxiety and fear on the part of the counsel for the defense. The remark did honor to the sagacity of the acute observer.

When I consider, gentlemen, the large circle of friends drawn to the defendant by the attraction of a heart as warm as ever beat in the human breast, looking to us for the realization of their hope of his deliverance; when I remember that an ingenuous and affectionate youth has committed into our hands the life of an aged father and that reputation which is now his only heritage—I confess I am overwhelmed with embarrassment and tremble in humble acknowledgment of my incompetency to do justice to this cause. To my mind, the thought of that mysterious and eternal sleep to which we

^s Mr. Heslep and Mr. Coffroth also addressed the Jury.

are all doomed is so allied with awe that it imparts a dignity and solemnity to the person of one who stands within the portals of the palace of death. And gentlemen, do you not, too, recognize the solemnity of the duty you are called upon to perform? Do you not recognize the fact that it is no light and trivial thing even to put in jeopardy the life of a fellow-being? You do, gentlemen, I know you do. The day has passed—thank God, when human blood flowed like water, and when gibbets and corpses were the proper ornaments of our refined and fashionable metropolis.

The time has come when a man accused of crime can find one spot at least in the state of California where he can have a fair trial by a jury of his peers in accordance with the time-honored usage of that noble race from which we are sprung. And gentlemen, if there is a spark of sympathy in your hearts it will lighten up at the recital of the wrongs and persecutions to which this man has been subjected. The defendant is an aged man. The frosts of nearly sixty winters have fallen upon his head. One night passed by Marie Antoinette in a prison of France was, by suffering and agony prolonged into an age; and this man has learned in the same way to count weeks for months and months for years. He has been driven from the bosom of society, compelled to flee as though a convicted felon and seek an asylum in a distant province. But the blood-hounds were upon his track. They found him domiciled among the kind and hospitable people of Santa Barbara. Expelled and driven thence he was compelled to flee to the mountains. During the day he is skulking from rock to rock and at night he goes down to the plains for a drop of water to cool his parched lips. In the meantime his substance is wasted or confiscated; and he comes to you now broken in spirit and ruined in fortune. And this has been done, not by a set of cannibals in the Fiji islands, not in a savage province, but in a land from where from some mountain peak, the poor wanderer could still see the Stars and Stripes. But alas! they no longer waved o'er the land of the free or the home of the brave.

Now, gentlemen, you will be told that this man fled from his

indictment. It is not true; and the proof lies in this, that as soon as it was safe for him to return—aye, even sooner perhaps than prudence warranted—he did return and delivered himself into the hands of the law. Even then he was forced to seek his protection within the very verge of the Capitol. He was compelled to procure the passage of a law which would enable him to secure a change of venue without making his personal appearance in the city of San Francisco. This law was passed by the legislature of California with extraordinary unanimity. It was based upon the admission of the representatives of the Vigilance Committee that it was true that this man could not go to San Francisco safely. And the act recites the fact that there is still a portion of this country where the majesty of the law is set at defiance—where the government cannot protect her citizens. What a shame and what a reproach to that city and what a blot upon your historical record! Never would I have voted for such a law. I would have said: “Perish fifty McGowans before I put upon record such an humiliating confession.”

Can it then be pretended, gentlemen, for a moment that it was anything else than the lawless act of these lawless men that drove this man into exile? Why and how is he here now? Who brought him here? He never desired anything but a fair and impartial trial; not the honorable trial of the Vigilance Committee; not a trial from a body of men who, we have ascertained from one of their own number, look up testimony and when they discover that it is not exactly fit for the purpose, disregard and ignore it, as old Curtis told you was the fact in his own case; not the honorable trial of the Vigilance Committee; but a fair and impartial trial by a jury of his peers.

But let us—for our time is short gentlemen—let us proceed without further circumlocution to the consideration of the facts of this particular case. The defendant stands charged with the crime of murder. It is pretended that on the 14th day of May, 1856 he murdered one James King of Wm. Now the evidence shows that upon the evening of that day a rencounter took place between James P. Casey and

the deceased in which King was wounded by a shot fired from a pistol in the hands of Casey. Three questions are presented by this state of facts. The first is: Did King die of the wound inflicted by Casey? Secondly: If King died from the wound was that act murder, or manslaughter or justifiable homicide? Thirdly, and chiefly: What was the complicity of the accused with the act?

Now as to the question whether King died of the wound inflicted by Casey—because certainly if Casey did not kill King or if King died in consequence of operations or acts performed by others, whether they may have been committed as we shall urge by Doctor Toland and those acting with him, on the one hand or by Doctor Cole, as is contended by his associate who represents the people; on the other hand it is equally unimportant for us, for it is not contended that there was any complicity between us and either of these physicians. Now, gentlemen, I confess that this is a subject to which the gentleman who opened the case is much more equal than I am. Remember the true rule of law is and so His Honor will charge you, whatever may be the opinion to the contrary of the distinguished professor both of law and physic—who seems by the way to have obtained his view of the law from the Vigilance Committee than from any system of jurisprudence—the Court will charge you that it is the business of the Commonwealth before she can obtain a verdict to satisfy you beyond all reasonable doubt that the act of murder was committed by the party charged with the deed. If there is reason to doubt that James King died of the wound and not of the treatment there is an end of the prosecution. Well, now let us look at Dr. Toland's testimony first as it stood uncontradicted. Dr. Toland tells you that there were two or three causes operating, any one of which might have produced death. He does not pretend that any mortal part was wounded when the ball passed through the body of Mr. King. He says that King might have died of inflammation of the vein and that inflammation of the vein we have shown and he admitted it might have possibly been produced by the treatment. He tells you again that King lay

all night upon a single mattress, upon a counter in the office of the Pacific Express Company; that the evening was raw and chilly, although he says that the room was warm; that many applications of cold water were made to his wound and that King was at the time in delicate health. He tells you that upon an examination of King's body immediately after his death evidences were exhibited that justified the conclusion that he died of pleurisy and that it was possible that from the circumstances of the treatment alluded to he might have caught a cold which terminated fatally. I do not pretend to tell you that Dr. Toland said that the probability was that King met his death from this source, but I call your attention to the fact that he admitted that such possibility was the case. Now without going into the evidence on the other side, does Dr. Toland's testimony leave your minds without a doubt—that James King of Wm. died from the wound received from James P. Casey and from nothing else? Can you upon your oaths, say that that is the fact? Do you not perceive that if nothing else stood in the way of the conviction of Casey for this murder, if it were proven that McGowan started with Casey for the purpose and with the design of murdering, or if you please of assassinating King, even then here would be a stumbling block which the prosecution could never surmount. Why, there is not a man within the sound of my voice who heard the testimony of Dr. Toland who can say more than this: "Probably" James King of Wm. met his death from a pistol-shot but it is impossible for human ingenuity, for human wit, to ascertain with certainty whether he died from cold or from the wound and the defendant is entitled to the benefit of the doubt.

But in addition to that, what do we have? We have the testimony of a physician who, if I can be permitted to express an opinion at all upon such a subject, exhibited, upon the most scientific cross-examination that I ever heard, the greatest intelligence and ability to which the gentleman himself (Mr. Heslep) paid the highest compliment. Such a witness does not hesitate to say that the death of King was in consequence of the treatment and not of the wound.

Now then, gentlemen, how does the case stand? Here are two experts standing at least upon an equal footing; for if we claim no superiority for our witness, the gentleman will at least admit his equality when he remembers that he comes to us indorsed by the Vigilance Committee of San Francisco; that he is the great surgeon-general on the staff of the chief marshal of the Executive Committee of the Vigilance Committee. And, by the by, what will the Committee think when they hear that their attorney-general has been trying to deprecate his brother-in-arms, the great surgeon-general on the staff of the chief marshal? May it not be that they may expel the attorney-general for such disrespect to his superior officer?

Here then are two unimpeached witnesses, scientific men, between whose comparative merits you and I (who cannot understand the technical terms they use) cannot determine; the one thinking that in all probability Mr. King died of his wound and the other well assured that the wound was not mortal and that he was killed by his physicians. Does not this raise a doubt which must compel a verdict of not guilty?

But if King died of the wound, what was the character of the offense committed by Casey?

I am going to speak of the deceased and I will do it frankly and impartially. I knew him well; he was for many years my client; an intimate friend. He was honest, upright and honorable. This was in the days of his prosperity. He met with sad reverses, he became poor; he returned from his daily labor to a famishing family; he drained the bitter cup of poverty to the very dregs. With some little pecuniary assistance afforded him he resolved to start a newspaper in the city of San Francisco. At this point my opportunity for personal communication with him was lost. I knew him afterwards through the columns of the *Bulletin*. All of good that I said concerning this man is based upon my intimate personal relations with him; all that was bad in his conduct was matter of public notoriety. He commenced a line of

business that was already crowded to suffocation in the city of San Francisco. It was necessary to call attention to the new paper; it must be striking else it would not pay; he resolves to cater to the public appetite for slander but it was his poverty not his will consented. He takes the New York Herald, in its earlier days, for his model; he becomes a public libeler and a public nuisance. He is a public brawler too; he professes himself prepared and ready for such an encounter as he at last provoked. He stirs up heartburnings and strife and expects to escape the effect of the angry passions he has aroused. As well might he who throws a brand into a powder-magazine expect to escape the explosion. He utters wholesale defamation and dares his victim to the encounter. It is Selover today, Col. Baker tomorrow. At last he attacks the deceased Casey, alluding to his early aberrations and unfortunate career. Casey seeks an interview to beg him, it may be, to forbear; he pleads his repentance, his hope to bury the past in oblivion and begs that he may be allowed the opportunity to reform. This ruthless censor of public morals denies the boon, drives him out with contempt and ignominy and sends forth a number of his abusive sheets, in which he holds Casey up to public scorn, calls him a prison convict, a ballot stuffer and declares that he deserves to be hung upon a gibbet.

Is it unreasonable to suppose that Casey, stung to madness by such conduct as this, sought King and shot him under the influence of irresistible passion? The fact that Casey had been in reality an inmate of Sing Sing does not weaken, but rather strengthens, this view of the case. The question is, not how justifiable King may have been, but what state of mind in Casey was this conduct calculated to produce? The law makes allowance for sudden heat and irresistible passion. Casey, says one of the people's witnesses, was a passionate man. Was not this provocation sufficient to sting him to madness and reduce the killing from murder to manslaughter? Is it possible to confound this act with base assassination? What is it but that vulgar, blackguard, but very common thing a street fight? This little fellow Casey, what-

ever else he may have been—and God knows he was bad enough—was brave and magnanimous; and according to the account of General Estell who had a better opportunity of hearing and seeing than anybody who describes it, it was a fair and equal combat. King who is armed is warned and has full time to draw. He thrusts his hand into his bosom, where, it is afterwards discovered, he had a loaded pistol. Casey advanced fifty-five feet after he attracted King's attention and warned him to defend himself before he fired. This is the testimony of Estell and he is the only witness who from his position could have seen and heard what passed. Can this be called a cold-blooded murder? The court will tell you that there can be no accessories in manslaughter; and if you think Casey was only guilty of manslaughter you must acquit the defendant.

But here the counsel for the state will talk largely of "the liberty of the press"; he will tell you that it is the palladium of freedom and that the deceased fell a martyr to this great principle. This is all gammon. When we speak of a free press we mean freedom of speech, liberty to discuss political topics. But private character has always been held sacred by a right thinking people. The world would become a bear-garden if every man was allowed to say even what he honestly thought of his neighbor; the freedom of speech must be kept in wholesome subjection. The press is a two-edged sword and may be wielded for good or for evil. All liberty may degenerate into licentiousness; and where there is no restraint there can be no freedom.

What would you call him that daily through your streets, should denounce his neighbors? Would not such a one be a common nuisance? And when he got his head broke, as he assuredly would, would not the community rejoice? If instead of confining his pestilential breath to mere words which die upon the air as they are spoken, he should print them in indelible characters and scatter them to the four quarters of the globe, would the offense be less heinous? or would the stricken offender be more a subject of sympathy?

The law it is said, affords a punishment for the libeler;

but when, as in this case, the offender can beat you upon the execution the law becomes impotent.

The power of the press is despotic. Some one has said that the best form of government is a despotism limited by the power of assassination. If we are to be subjected to the despotism of the press, let it at least be limited by the principle of personal responsibility.

But granting that Casey murdered King how is the defendant implicated in the act? This brings me to a review of the remaining testimony which I will hasten over because my time is limited. And to the hurried nature of this review I submit the more readily because really the testimony is of such a character as to make comment unnecessary. I assure you that when the state closed her evidence I desired to submit this cause to you without argument and without testimony on the part of the defense; but on this I was overruled by my client to whose wishes I was compelled to defer.

The first testimony at all relevant is that of Mr. Taylor who testifies that Mr. McGowan had a revolver and a deringer loaded at his rooms on the morning of the fatal day. But he states that the practice of wearing arms is universal amongst the most respectable people of San Francisco; that he is called upon hourly by others as he was by Mr. McGowan; that he had done the same thing for Mr. McGowan himself repeatedly before; and that Thomas King the brother of the deceased had been to his establishment on a similar errand.

Curtis—poor old Curtis—testified that he met McGowan and Wightman about half-past four at Dan's saloon where a boy, not the boy Butts, came and got Wightman's pistol for Casey. Over and above the prevarications and self-contradictions of this witness he is flatly contradicted by Captain Dodge whose testimony is confirmed by Mr. Grant. According to his own statements Curtis must have met McGowan at fifteen minutes after four at the latest; and by Dodge and Grant—making all possible estimate for erroneous estimate of time—we account for McGowan's whereabouts from four to half past four.

But why should I trouble you with comments upon the testimony of this witness? The prosecution gives him up as a hopeless case. The most important, nay, the only witness whose testimony has the slightest tendency to prove even a knowledge of Casey's intentions upon the part of the accused, is entirely overlooked by the counsel who opened for the state. In a speech of two hours the testimony of Curtis was never even alluded to. The fact is the gentlemen from San Francisco came up provided with two strings to their bow. It is necessary that the defendant should be connected with Wightman, and Wightman with Casey. This is the theory of the indictment. The testimony to affect this object, the Vigilance Committee had ascertained, as we learn from Curtis, could be drawn from two sources; Curtis himself on the one hand and the boy Butts on the other. But the two stories will not stand together and as we have seen these honorable gentlemen having in their trial of McGowan by chance gotten hold of Butts first, decline to examine Curtis, when as he says one of their number could not persuade him to vary his story so as to confirm Butts' statement. What a fair and honorable trial is afforded an absent and unrepresented defendant by that honorable body the Vigilance Committee!

But it so happens that Butts' reputation has been a little tarnished since he was the favorite witness of the Vigilance Committee rooms. Butts is a good boy no doubt, but the community is prejudiced against Butts; the county jail and the chain-gang have detracted somewhat from Butts' respectability. On the other hand, Curtis is a gray-headed, decent looking man. So the choice lies between Curtis' story of the boy and Dan's saloon on the one hand, and the boy Butts and the Bank Exchange on the other. After some consideration they determine in favor of Curtis but they are both brought up for the trial as a jockey brings two horses for a race. They will run Curtis unless an accident happens to him. Well, an accident did happen to poor Curtis; he broke down. So reluctantly and unwillingly upon the part of the state Butts' irons are knocked off and he is transferred from his

dungeon to the witness-stand; and Curtis is as completely forgotten as if he had never lived.

Mr. Heslep stated that he had left that part of the prosecution to his associate Gov. Foote who would take care of Curtis.

Mr. Botts—That then is the game is it? Then it stands thus: Heslep, Butts; Foote and Curtis. Why this division? Was it that Curtis was too heavy a load for the first gentleman and that it needs all the strength of an ex-governor and an ex-senator to pack the old man through? Gentlemen, is a man to be tried for his life upon testimony such as this?

Taking now the testimony of Butts and yielding to the tacit request of the opening counsel that we should forget that Curtis had ever been upon the stand, we trace Mr. McGowan every foot of the way and through every moment of time from four o'clock, when he first appears in the company of Captain Dodge, until we find him at the corner of Washington and Kearney Streets, when the fatal shot is fired. Thus it is that not only has the counsel for the state failed to redeem his promise of showing McGowan at his station prepared to perform his role in the murder of King, but the defense, by the greatest good fortune has been enabled to establish the negative of the proposition, thus bringing himself even within the new rule propounded by the representative of the Vigilance Committee, that a man must be held guilty unless he can prove his innocence. Not one tittle of evidence has been offered even tending to show a conspiracy between Casey, Wightman and McGowan to murder King. Not a particle of evidence to show that McGowan ever saw King or entertained the slightest acrimony against him. The only attempt that has been made is to raise a suspicion that McGowan or Wightman furnished the fatal weapon. You are left, I presume, under this new doctrine of the attorney-general of the Vigilance Committee to guess that the pistol if furnished was furnished for the purpose of aiding in murder; you must cleanse your heart of all charitable and Christian feelings, as if you were members of the Vigilance Committee. You must never draw an inference in favor of the

prisoner. You must not suppose it possible that Casey told him he wanted the pistol for lawful purposes. From the mere fact of loaning a pistol you must infer a heart devoid of social virtue and consign a human being to a felon's grave.

There was one phrase used by the opening counsel against which I must enter my protest. He frequently called me his "friend Botts". Now the present condition of my client admonishes that the friendship of one who comes under the ban of the Vigilance Committee is a dangerous thing. Many attempts, unsuccessful it is true, have been made to establish this relation between McGowan and Casey. Now suppose it should please the Vigilance Committee to hang instead of expelling their attorney-general for his bad conduct to the Surgeon-general, how then might it fare with me if they could prove that I had permitted him to call me his friend in this public manner, without contradiction? Under the circumstances I prefer to imitate the sagacity and prudence of my experienced friend Governor Foote and occupy the position of a neutral until further developments.

Yes, gentlemen, I was not less surprised than grieved to hear that my respected friend the Governor—one of the first citizens in the commonwealth—declare in the progress of this trial that when the state was shaken to its center, when five thousand men in arms—a motley crew of foreigners and disaffected citizens—arrayed themselves against the laws of the land at a time when all agreed that the state was in imminent danger—that at such a time my friend remained neutral.

Mr. Foote: I never used the term "neutral".

Mr. Botts insisted that he had repeatedly used the term but suggested that he had a right now to explain what he meant.

Mr. Foote said that all he intended to say was that during those exciting times he was perfectly calm and took part with neither side.

Mr. Botts: The explanation is only a good definition of the word "neutral".

But, gentlemen, it is neither the law nor the evidence that we have to fear upon this occasion, for there is no testimony in the case that any more tends to connect the defendant than any of the witnesses who have appeared upon the stand,

with this homicide. Indeed whilst others seem to have been on the lookout for some violent result to this affair between Casey and King, he appears ignorant of, or indifferent to, the approaching fight and is found walking from the expected scene of action.

It is not then the testimony but the influence of that once powerful organization known as the Vigilance Committee of San Francisco, that we have to dread. And, gentlemen, who and what are these men that their behests are to be regarded by you? What are they but a band of traitors who have raised their sacriligious hands against their country? What is there about them to make them respectable? Is it because they have degraded the character of our free institutions in the eyes of the civilized world? Is it because they have chilled the hopes of the philanthropist and proved that the great problem of self-government remains still unsolved? Is it because they overawed our people with foreign mercenaries, snatched up our citizens into their infernal slaughter-house and thrust their strangled bodies from the windows or else in mockery threw us out the bloody corpse saying "See where he killed himself"?

But we are told that there are good men amongst them. Oh! yes, no doubt of it. There were good men too in the crowd that followed the Son of God up the Mount of Calvary. There were honest fanatics no doubt amongst the fiends that perpetrated the massacre of St. Batholomew. What motives actuated these men can never be known certainly to any but the Great Searcher of all hearts, but with our limited perceptions we are compelled to derive motives from acts. And if the killing of King by Casey justifies us, as our opponents say it does, in concluding that Casey possessed a heart devoid of virtue, why should the murder of Casey and Cora by the Vigilance Committee lead to the inference that its members are mild, gentle and loving Christians?

Think not, whatever may be my detestation of their crimes, that I am animated by feelings of hostility towards these men. That feeling has long since been absorbed in pity. They have unlawfully taken the lives of their fellow-men.

The Great Avenger is on their track. "Whoso sheddeth man's blood, by man shall his blood be shed". They have awakened from their bloody frenzy to find themselves surrounded by dangers. They are murderers in the eyes of the law, and in the eyes of all Christian communities. As has been well said of them, whilst they have banished their miserable victims from San Francisco, they have exiled themselves from the balance of the world. The circle is constantly narrowing around them and the time will come when they cannot find a corner of the world in which to hide their heads.

But, gentlemen, I am admonished that my time is up and I must conclude by thanking you for the profound attention with which you have listened to my remarks.

Mr. Foote: Gentlemen of the jury: I shall endeavor to compress as much as possible and not pretend to give to the many topics which present themselves the degree of attention their importance really demands. I do not agree with the counsel for the defense in any of the legal propositions they have laid down. If I did not really believe that the prosecution had clearly made out a case I trust I should have had the honesty to have urged the entering of a *nolle prosequi*. They have misrepresented every feature of the evidence and every legal proposition arising in the case.

Notwithstanding all our protests both counsel insist on dragging the Vigilance Committee issue into this trial. Both have attacked the Committee and coarsely assailed and vilified its members in a way never before suffered by any honorable body of men. Although being a lawyer and residing across the bay from San Francisco, I could not consistently with my ideas of propriety, unite with them, I approve and indorse all their acts. I have only interfered to bring about peace and for that purpose have seen the Governor, and had Gov. Johnson listened to me, within five days the Committee would have been disbanded entirely and all the subsequent difficulties avoided. The Governor himself ordered the sheriff to surrender the jail and when the pilot and captain thus forsook the ship the crew were forced to take charge. They did so and have covered themselves with glory of which the gentle-

men on the other side can never deprive them. Gibbets were erected and blood did flow, but not freely as was said by the defense; they spared many; among them were Judge Terry and McNab one of their own witnesses. I myself urged Judge Terry to return to his place, as he might have to sit as judge on the very issues then raised in San Francisco; and I told them that Chief Justice Marshall would never have acted thus. But Terry rejected this advice and thus got into difficulty. Mr. Botts has lately been so successful in defending the worst criminals in the state, that his sense of moral rectitude has been considerably shaken and he has been using the same kind of arguments in this case as in theirs. If he succeeds in having this and all his other clients set loose he will make California such a hell upon earth as never existed since the days of Adam.

Mr. King has been disparagingly alluded to and justice to the illustrious dead requires that a reply should be given. Mr. Coffroth said he had known McGowan in the legislature of Pennsylvania. Satan was once in heaven but he was ejected and thrown over the battlements. I suppose the gentleman on the other side does not also sympathize with his satanic majesty merely because he has fallen from his high estate as McGowan did. They eulogize Casey too and Mr. Botts said he had known him. What does the paper that they have admitted in evidence show? That he was an unfortunate ballot-box stuffer. He came to California to reform, did he? I too, have known Mr. King and justice to the memory of the illustrious dead requires that I should speak of him. I had known Mr. King's father years ago in Washington and his son had been educated and brought up properly. He was a great man as a citizen, a husband and father and in his latest position as an editor. An imperious necessity existed in San Francisco for just such a paper. He did his duty full, fairly and faithfully and because he did so he was murdered. In the words of one of our domestic poets:

"He died at his post doing duty."

Here in your presence, gentlemen of the jury, the ashes of

the dead have been ruthlessly disturbed and, to use one of Mr. Botts' own expressions, I expect that he will not be able to repose in quiet upon his pillow until he has made reparation and atonement to the memory of the illustrious dead. They eulogize Casey and Cora and sympathize with the crew which the Vigilance Committee rose to drive out. Had the Vigilance Committee not been successful and if the crew had continued uninterruptedly to rule over us, I would sooner take up my residence in the infernal regions than continue to live in this state. And so would every man who is the father of a family and who has proper feelings and a proper sense of propriety. But say they, Mr. King brought his death upon himself. They say that was a very abusive article. I deny it. It is a charitable, a liberal and a just article. If that is abusive and vile how shall we characterize the language of those gentlemen here this evening? Why, I would not call it by its right name. Billingsgate is a term I never apply to remarks of gentlemen. Mr. King offered to rectify any wrong he had done, if error was shown him. How many editors of the present day would do so? And the gentlemen say that such an article made Mr. King deserve the death he met! and they justify the act!

Mr. Botts: Governor, Governor! I did not. I said it was a provocation which reduced the criminality of the act from murder to manslaughter.

Mr. Foote: The gentleman said he would have done so.

Mr. Botts: I did not.

Mr. Foote: Well, no matter what his words were. He does say it was manslaughter. I say it was not. It was a cold-blooded, premeditated, villainous murder! the most fiendish, cowardly, infernal outrage ever committed. Mr. Botts thinks it very abusive for Mr. King to say that Casey ought to be hung. I say that the man who would stuff a ballot-box ought to be hung; and if Mr. King having a knowledge of the fact that Casey had done this act had failed to publish, it he would have failed to do his duty as an editor and would have been unworthy of his position.

As to the testimony of the physicians. Mr. Botts says the testimony of Dr. Cole raises a doubt in your minds, the benefit of which his client must have. But Dr. Cole may talk as he did forever and may bring as many ugly, stinking corpses into court as he pleases (and in my opinion that comes the nearest of anything in the world to humbug) but he never could produce a doubt in my mind, or in any of your minds that Mr. King did actually die from the effects of the wound inflicted upon him by Casey. Contrast Dr. Cole with Dr. Toland and the comparison will be very unfavorable to the former. Mr. Botts thought to compare me with Casey! and speaks of what I would probably do if an abusive newspaper article was written about me. I have been attacked by the press and by hireling editors who were paid to injure me, but I defy the defense to point to an act of mine which would justify them in attempting to draw such a parallel. It is not either true in point of fact that I ever loaned my pistols to one man to shoot down his fellow-man or to fight a duel with. The gentleman himself and all who are acquainted with me know that I have always and many a time interfered to prevent bloodshed and infractions of the law.

Gen. Estell's testimony was intended to suggest a doubt whether Mr. King drew his pistol. Understand me I do not accuse him of perjury. But Estell is the only one who speaks to that point. Others were nearer than he was and on the *qui vive* and had their attention directed as much as his. They did not hear those words. I think he has slept and dreamt on it and drawn on his imagination for his facts. He ought to have treated his memory with more consideration.

I shall not attempt to defend San Francisco from the attacks of this young man (Coffroth). He is able and will doubtless attain to eminence in his profession. But a man so young as he has no right to charge that the people of San Francisco labor under depraved tastes in any particular. Until he can give satisfactory evidence that his own tastes are refined in every particular he ought not to set himself up as a judge in Israel! Mr. Coffroth speaks of his acquaintance with McGowan. I do not know the prisoner at the bar

and God forbid that I should do him injustice. I know nothing concerning his family in Philadelphia and whether he was always a kind, affectionate husband and father or whether he was neglectful, dissolute and vicious. These facts not being in the record either way the jury could pay no attention to them.

This distinguished Pennsylvania legislator, it appears early on the fatal morning got a big navy revolver and a certain yellow mounted derringer loaded. Not satisfied with such an armory he gets also a knife. The wolf was early in his walk. What was the emergency that required this arming and extra-arming? Then when he read the article in the paper he made a threat that "Casey would attend to that". And now Captain Dodge attempts to testify where McGowan was that day. Captain Dodge is a very fine young man but he drinks hard. If there is anything that enfeebles the memory and confuses the faculties it is strong drink. And he was as full as a tick that day and by his own testimony drank four times in half an hour. Now he tries to remember where he was and the time. Such testimony is not worthy of attention. My calculation of the time required to go where he said he went would just bring Mr. McGowan back onto Montgomery street in time to be at the scene of the murder when it occurred. Mr. Botts may make his calculations and you gentlemen of the jury, must make your own. Then there is the boy Butts who in my opinion has been lied on a great deal. Mr. Coffroth does not call his testimony in question. He told the truth. Just before the murder McGowan and Wightman were on the spot at the Bank Exchange and McGowan sent Wightman out to see what Casey wanted. They were on the lookout! The defendant's counsel have called in question the truth of the testimony of our venerable witness, Curtis; yet never have I seen counsel so exercised and taken down as when he was delivering it. Why, Mr. Botts could not sit in his seat and was unable even civilly to receive suggestions from his associate counsel, such was his rage and anger as the evidence bore against him. Mr. Curtis was not examined by the Vigilance Committee concerning Casey's guilt. They did not

need him. He was not an eye-witness of the transaction. Had they taken his testimony they would have come to the same conclusion as every sensible man, that the boy who came to Wightman in Dan's saloon was not Butts and that the two incidents spoken of by Butts and Curtis were separate and distinct.

Now about the pistols. If not McGowan's—particularly the gold hilted one—whose do you suppose they were? Why did they not produce them here? Casey was led away—in triumph armed cap-à-pie—by Wightman the friend of McGowan and who had been his companion through all the day; and he received the pistol of Casey. Why was he not brought here with the pistol as a witness for his friend? He could have set the matter beyond all doubt and cleared away all suspicions.

The legal authorities give the definition of an accessory as one who stands by—is in sight or near enough to conveniently render help if necessary to accomplish a crime. An accessory may also hire or employ others to accomplish the crime for him. If the jury believe that McGowan employed Wightman to help Casey they must bring in a verdict of guilty.⁹

As to the treatment of wounds, it is held that if a mortal disease grows out of a wound given by another and the wounded man dies of the disease, nevertheless the wound itself must be regarded as the *causa causata*—the true cause of the death—for without it the man would never have had the disease. As to the physicians Dr. Toland was evidently a man of greater acquirements and experience than Dr. Cole and was not to be put down by him even if their opinions did conflict. The five other physicians would weigh Dr. Cole's evidence down any hour. The testimony of Stillman, that Mr. King had a pistol on him, notwithstanding all Gen. Estell's testimony, that of the other witnesses made it clear that Mr. King only raised his hand after he was shot, to press it upon the wound. He was armed in accordance with that provision

⁹ He here read from Russell on Crimes concerning conspirators and the part a person must take in the commission of an act to render him one.

in the constitution which permits every citizen to bear arms in his own defense—not as a murderer. When the defendant's counsel resorted to arguments with so little foundation as those they argued upon this point, it shows they are hard run for facts.

We do not, as the defendant's counsel said, intend to insist that McGowan fled from this indictment. He did undoubtedly fly through terror of the Vigilance Committee, for our courts he had defied before. But they tell us he has been persecuted. Persecuted! Persecuted! and by whom? Has any man before been indicted for murder and escaped even a governor's proclamation? Or had a special legislative act passed for his benefit? McGowan was in Sacramento—in the same city with the Governor. Was he in jail? No; he associated with other gentlemen on the public streets. And here too he was only committed to jail after the opening of the Court. It is unfair and ungenerous for the defense to make use of such word or argument in this case.

THE CHARGE TO THE JURY

JUDGE MCKINSTRY said he was glad the case had been so ably presented to the jury as it rendered unnecessary many explanations of the law which otherwise it would have been his duty to make. It had been told to them that here was a period in the history of the state when the laws were subverted and a certain organization usurped the power of the courts. With such matters of history they have nothing to do and no examination to make into them. Here no power but that of the law operates; no other organization has a representation and no notions of justice must be entertained except that administered by established authority.

Every citizen has rights which are not to be affected by popular clamor or the demands, for or against him, of an ill-regulated press. The crime of which the prisoner stands charged is that of murder and by our statutes all distinctions between the mode of proceeding against principals and accessories are abolished. Hence if you are satisfied that James

King met his death under such circumstances as constituted the crime of murder and that the defendant assisted in or counseled the act, then you are bound to find him guilty. If however you find that the crime committed was that of manslaughter, as that crime implies no malice, but a sudden killing in the heat of passion, there can be no accessory; therefore you would have to acquit the defendant.

From the testimony offered by the two physicians you have to determine whether Mr. King died from the effect of the wound itself or it was the result of malpractice. If from the wound, then the death was the result of the act itself; but if the result of the mode of treatment pursued by the physicians then you have no further examination to make and must acquit the defendant. If a person receive a wound, not in itself mortal which superinduces a disease afterwards causing death, this is murder; but if the treatment produce a new disease which proves fatal then the party inflicting the wound is not guilty of murder. I understand Doctor Toland to say that the wound caused lesion of the vein and injury to the nerves in the vicinity and as another consequence, inflammation of the lining of the chest, which with an inflammation of the vein itself, caused death. Doctor Cole says the wound itself was not mortal but that death was caused by ill-treatment and he proceeded to speak of the irritation caused by the use of the sponge and tourniquet, which in his opinion caused the fatal disease of phlebitis or inflammation of the vein.

The question thus stands and is one of fact for you to determine. Pay, therefore, due attention to the statements of the physicians and draw your own conclusions. If you believe Mr. King's death resulted from the shot itself then the question is: What was the crime? If only manslaughter then there can be no accessory and no conviction of the defendant under this indictment.

A newspaper article however violent, unaccompanied by a personal insult, is not a sufficient provocation to reduce a killing from murder to manslaughter. If you are satisfied of the first point and not of the second, it will then be your duty to

convict of murder in the second degree, if the defendant was present; but if not present then he cannot be guilty. Murder in the second degree implies malice; express malice is to be evidenced by the case as poisoning or lying in wait—a deliberate intention must necessarily be proven. The presence of a party does not establish the fact that he aids or abets the crime. To convict, you must be convinced that there was some prior agreement or concert of action between them or that he was at some convenient distance, ready to assist. If you believe the defendant did advise, counsel and abet at any previous time, this crime, you must convict, if you deem it murder in the first degree. You are to determine the credibility of witnesses by all the circumstances brought to light.

If you are satisfied a witness has made an intentional misstatement, you must reject all his testimony. If you find two witnesses conflicting, it is your duty to ascertain, if possible, which is correct and if you cannot do this, to discard the evidence of both. If after a fair examination of all the facts and testimony you still have a reasonable doubt as to the guilt of the prisoner, you must acquit. The mere knowledge on the part of a person that a crime is to be committed and his not making it known, does not constitute an offense. If the jury are of the opinion that Casey committed a murder and are not satisfied that the defendant aided and abetted the crime, they must acquit him. With these remarks, gentlemen of the jury, I leave the case in your hands.

THE VERDICT

The *Jury* retired and after an absence of ten minutes, returned and announced a verdict of *not guilty*.

THE TRIAL OF LAURA D. FAIR FOR THE MURDER OF ALEXANDER P. CRITTENDEN, SAN FRANCISCO, CALIFORNIA, 1871.

THE NARRATIVE

On November 3, 1870, Laura D. Fair¹ shot Alexander P. Crittenden² on board a steam ferry-boat on San Francisco Bay. Mr. Crittenden was a distinguished lawyer, a daring speculator, a man of cultivation and intellectual vigor

¹ She was a native of Mississippi and at this time was about 33 years of age. At sixteen she married a man named Stone who died about one year afterward. She then married a Thomas Gracien of New Orleans, but a divorce was obtained six months afterward. In 1859 she married Colonel W. B. Fair, who was at that time Sheriff of Shasta County, California, but who subsequently moved to San Francisco with her. Owing to family troubles he committed suicide in December, 1861. After the death of her husband, Mrs. Fair conducted the Tahoe Lodging House in Virginia City. In 1870 she married one Jesse W. Snyder but was divorced from him in two months. During the war her sympathies were with the South to such an extent that she took a shot at a Northern soldier, but as her aim was bad she was never punished. On another occasion she shot a man at the Russ House in San Francisco, whom she claimed had made a disparaging remark concerning her, but again her aim was bad and again she escaped prosecution.

She had some ability as an actress and appeared at the Metropolitan Theatre in Sacramento on March 5, 1863, as Lady Teazle in the "School for Scandal." For many years after her acquittal Mrs. Fair made a living as a book agent in San Francisco. Duke, *Celebrated Criminal Cases of America*, p. 65.

² CRITTENDEN, ALEXANDER PARKER, was born, Lexington, Ky., Jan. 14, 1816, and was a nephew of John J. Crittenden (see 3 Am. St. Tr. p. 73). Andrew Jackson was a close friend of his family and through Jackson's influence Alexander was sent to West Point where he graduated with Generals Beauregard and Sherman and remained in the army about one year. At the age of twenty-two he married and went to Texas where he was admitted to the bar. In 1852 he came to San Francisco and associated himself with S. M. Wilson. Under the firm name of Crittenden & Wilson they became one of the most prominent law firms in San Francisco. On the day of his funeral the Federal, State and Municipal Courts adjourned.

and a member of the famous Kentucky family of that name. Mrs. Fair was a woman of a vehement and passionate disposition with the two ruling tastes, namely, for money and men, each of which she had in her brief career gratified with great success. She had managed to lay by some \$10,000 and had been married four times and "if all that was said at the trial was true, she ought for her fair fame to have been wedded even oftener."³

She had long been expecting and demanding that Mr. Crittenden should procure a divorce from his wife and marry her. She could not bear, as she often wrote to him, to think that he was living with another woman. She hounded him on ceaselessly and he met her with promises. Finally when his wife returned from the East where he had sent her on a lengthy vist, Mrs. Fair could bear it no longer. She talked to him in the usual strain but all her arguments and entreaties received an unsatisfactory response. Unknown to him she followed him to watch his meeting with his wife; she saw him kiss that lady and her vindictiveness culminated. She walked up to him and shot him in the chest, dead.

At the trial she set up the defense of insanity. As it was perfectly obvious that she had not been insane a little while before or a little while after the event, she sought to make it out that when she fired the fatal shot she knew not what she was about—that form of transient lunacy known as "emotional." Her testimony was well thought out and very clever. She began by giving a clear narrative, which as she neared the actual moments of the murder, grew more and more indistinct until at last she appeared as one almost bereft of memory. She did not say that she could remember nothing, that all was an utter blank, but that certain facts seemed to whirr back and forth before her mind's eye with an uncertain motion and an indistinct outline. And when it was proved that the pistol she used had been purchased only a few days before the murder, she said that some rough and noisy boys had been haunting

³ *Law Review*, July, 1871.

the doors and stairways of the house in which she had rooms; that she was afraid of them and wanted a means of protection in case of need.

But the jury rejected her story and found her guilty of murder in the first degree. But the Supreme Court gave her a new trial because her character had been attacked in the wrong way and because the speeches to the jury had been made in the wrong order. On the second trial her counsel were able to assemble and select a half, if not wholly, imbecile jury and she was acquitted.⁴

THE TRIAL.⁵

*In the District Court, San Francisco,⁶ California,
March, 1871.*

HON. SAMUEL H. DWINELLE,⁷ Judge.

March 27.

On a previous day, Laura D. Fair had been indicted by the grand jury of the City and County of San Francisco,

⁴ *Id.*

⁵ *Bibliography.* Official report of the trial of Laura D. Fair for the murder of Alex. P. Crittenden, including the testimony, the arguments of counsel, and the charge of the Court, reported verbatim, and the entire correspondence of the parties, with portraits of the defendant and the deceased, from the short-hand notes of Marsh & Osbourne, official reporters of the courts. San Francisco: Printed by the San Francisco Co-operative Printing Co., 411 Clay and 412 Commercial Streets. 1871.

⁶ Alameda County claimed jurisdiction at first, alleging that the shooting occurred within the limits of that county and the Grand Jury of that county indicted Mrs. Fair for murder. The Supervisors of San Francisco requested the Surveyor General of the State to survey the boundary line between the two counties. He reported that according to the lines established by law the shooting occurred in San Francisco County. The opinion of the Surveyor General was accepted as authority, the authorities of Alameda made no further attempt to prosecute the case and she was accordingly indicted in the City and County of San Francisco.

⁷ DWINELLE, SAMUEL H. (1827-1886). Born New York. Practised law San Francisco and Judge of District Court, 1864-1879. Was a younger brother of John W. Dwinelle, a noted California lawyer and writer.

for the murder by shooting of Alexander P. Crittenden, and had pleaded Not Guilty. The trial began today.

*Henry H. Byrne*⁸ and *Alexander Campbell*,⁹ for the People; *Elisha Cook*¹⁰ and *Leander Quint*,¹¹ for the Prisoner.

⁸ BYRNE, HENRY H. See *ante* p. 20.

⁹ CAMPBELL, ALEXANDER. See *ante* p. 20.

¹⁰ COOK, ELISHA (1823-1871). Born Montgomery Co. N. Y. Grad. Manlius Acad. Admitted to N. Y. bar and practised with his elder brother Eli in Buffalo. Removed to San Francisco, 1850, where he practised until his death, "a burning and shining light at the bar of that city for twenty years." Schuck, Hist. Bench and Bar of Cal. p. 442.

¹¹ QUINT, LEANDER (1825-1890). Born Bath, N. H. Removed to Vermont with his parents and educated at Academy there; afterwards taught school. Studied law with Judge A. Underwood, at Wells River, Vt. and admitted to Bar, 1849; removed to California that Fall and after following the occupation of a miner for a time, he began practice of law at Sonora, Tuolumne Co. and was sucator, 1862. Removed to Nevada. Removed to San Francisco 1865 where he practiced with Henry Edgerton. Died in that city.

"Perhaps the most notorious of mining-town justices, however, was R. C. Barry, who occupied the office at the Town of Sonora in 1851. Hittell's Hist. of Cal., III, 227.

"Leander Quint, an able and gentlemanly attorney of Sonora, who practiced before his court and against whom he entertained a violent dislike, had a habit when arguing a case, of gesticulating violently with his right hand, from which he had lost the first three fingers—the remaining thumb and little finger being extended in a peculiar and to the justice, very disagreeable manner. After a trial in which Barry had as usual ruled against him, Quint exclaimed, 'Judge, I never did have any show in your court!' 'No, sir' replied Barry, 'and you never shall have any! When a man comes into court and wiggles his fingers and rolls up his eyes as you do, he can't have any show here. In Texas we have man traps, sir, that cost thieves their fingers. It looks—suspicious, sir; it looks—suspicious—but I hope it is all right!'" (Hittell's Hist. Cal. II, 228.) "Another move of the Union part at this same session (of the Legislature) of 1863, in the direction of filling offices with only sound Union men, was one against *Leander Quint*, senator from Tuolumne and Mono counties. It appears that at the election of 1861, according to the returns, *Quint* received two thousand two hundred and eight votes against two thousand and thirty-six for Joseph M. Cavis and was therefore given a certificate of election and took his seat. At the session of 1862 Cavis appeared and contested *Quint's seat*; and a committee was appointed to take the testimony presented. From this it appeared that there had been

Today was occupied with the examination and selection of jurors.¹²

March 28.

The selection of jurors was completed and the following accepted by both the People and the Prisoner and duly sworn: Henry M. Beach, wine merchant; W. D. Litchfield, butcher; Hiram Rosekrans, hardware merchant; D. C. Littlefield, market superintendent; B. F. Sterett, printer; J. W. Shaffer, wine merchant; Herman Wenzel, jeweler; John E. Freeman, bookkeeper; Asa R. Wells, contractor; Ernest Mayrisch, wine and liquor merchant; George Morrow, hay and grain dealer; Thomas Horabin, wood and coal dealer.

The Clerk read the indictment to the jury.

a false return as to four-hundred and six votes said to have been cast for Quint at a place called Big Springs in Mono county—no such election having been held there and the returns being fraudulent and forged. Notwithstanding these facts, the senate of 1862, declared *Quint* entitled to the seat. In the senate of 1863, on January 20, Gaskill introduced a preamble reciting the circumstances and a resolution to the effect that *Quint* was not entitled. The subject-matter was referred to the committee on elections, which reported its opinion that *Quint* had been wrongfully allowed to retain his seat; that the senate had a right to review the action of its predecessor and change, alter or rescind the same; that the resolution of the senate of 1862 declaring *Quint* entitled to the office ought to be rescinded and he declared not legally elected. The recommendations were adopted by a vote of nineteen to ten on the first proposition and sixteen to five on the second, only a month before the end of the session and after the incumbent had been sitting and filling the office for very nearly a full term of two years." *Id.*, IV, 338.

¹² "A figure dressed in black and thickly veiled, entered, leaning upon the arm of Dr. Trask. It was Mrs. Fair and behind her walked her mother and little daughter. She threw back her upper veil leaving over her face only a thin fall of black tulle through which her features were plainly visible. A rocking chair had been placed for her between her counsel, and in this she seated herself. A glass of water was handed to her, she drank it and entered into conversation with her lawyers. She had been a handsome woman, though anxiety and sickness have left their indelible marks upon her face. She has rather a long nose, a mouth denoting considerable determination and wilfulness, with a full lower lip, well shaped light grey or blue eyes, well formed eyebrows and oval contour of face. Her hair is bright and golden; she wore it in short curls. She was very pale. She wore a black dress, black merino shawl, black gloves, sewn with white and black hat. Her ornaments, earrings and brooch, were of jet, mounted with gold. Her daughter, a little girl of nine, is very beautiful." *San Francisco Chronicle*, March 28.

THE OPENING FOR THE PEOPLE.

Mr. Byrne: Gentlemen of the Jury. Laura D. Fair is charged with the commission of the crime of wilful murder, alleged to have been committed on the 3d day of November last, on board a steamer called *El Capitan*, in shooting Mr. Alexander P. Crittenden, who died from the effects of the ball of the pistol, fired by this person, upon him, some 35 or 40 hours after the shooting. We will show you that some three or four days previous to the day of the shooting she went to a gun-shop in San Francisco and procured a pistol which she desired she could use with facility; upon the 3rd day of November that, so far as the personal appearance of the defendant was concerned, she was entirely veiled—evidently with a view to avoid detection. Those who witnessed the shooting, or many of them, are unable to identify the person who did the act. They saw the shot, heard the report of the pistol, and saw the concealed woman—but being unacquainted with her, and her features veiled, of course many of them were unable to distinguish who she was.

Gentlemen, that is substantially this case. I will direct your attention for a few moments to the various provisions of the statutes defining this particular crime. "Murder is the unlawful killing of a human being with malice aforethought, either express or implied."

"Express malice is that deliberate intention unlawfully to take away the life of a fellow creature which is manifested by external circumstances capable of proof."

"Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. All murder which shall be perpetrated by means of poison, or *lying in wait*, torture, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree," etc.

"Justifiable homicide is the killing of a human being in necessary self-defense, or in defense of habitation, property or person against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against any person or persons who manifestly intend and endeavor, in a violent, riotous and tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein."

"The killing being proved"—that is the provision of the same statute—"the killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to

manslaughter, or that the accused was justified or excused in committing the homicide."

Those, gentlemen, are substantially the provisions of our statutes, bearing upon the subject-matter of this particular crime.

We claim, upon the part of the prosecution, that the defendant prepared herself, by the procurement of a deadly weapon; that upon that day, on the departure of this steamer for Oakland, she proceeded down there by previous engagement with the hackman; that she went on board, and remained on the boat until its departure from the other side; that then, when Mr. Crittenden was sitting between his daughter and his wife, she approached them, concealed in the manner I have stated to you, and then and there, without cause, fired this pistol, from the effects of which he died.

That, gentlemen, is the case on the part of the prosecution. It will remain for you to say, when you have heard the testimony in this matter, whether there are any facts or circumstances of any kind or character that would by any means reduce this offense from that magnitude at which the law has placed it, at this stage of the proceedings, from the crime of murder in the first degree, to any inferior grade of crime. So far as the law is concerned, the statutes governing you, the peers of this woman, who are to try her for this offense, we say the law tells you, so far as that is concerned, that it is a wilful, deliberate murder, perpetrated with intent; that it had been thought over and reflected upon, and that it was associated with all the peculiarities of malice necessary to enter into the commission of a crime of this character. Gentlemen, we will endeavor to show you, on the part of the prosecution, that this woman did all these things, and having done them, in the name of the law we denounce her deed, and demand of you a verdict against her.

THE WITNESSES FOR THE PEOPLE.

William H. Kentzel: Am Captain of the Harbor police. On 3rd of November last I went on board the boat at a quarter past five to the Oakland wharf. The boat discharged and took passengers; was just leaving the slip when I heard a pistol fired. Went around on side of the deck and met Mrs. Fair. There was Mr. Crittenden and his family. Saw Mr. Crittenden stagger. Mr. Crittenden's wife was trying to hold him up and then I went up to him. When first I met Mrs. Fair I asked her who fired that shot; she made no answer.

I went in search of Mrs. Fair; she was sitting about half way of the saloon and Parker Crittenden pointed her out and says, "This is the woman that murdered my father." Mrs. Fair said, "Yes, and I do not deny it". With that I took hold of her and out of the cabin. Officer Kelly helped to keep the crowd away till we got over on this side and we took a hack and took her to the Chief's office. When we got to the city prison she said she felt very bad and wanted a doctor and I sent officer Murray after the doctor

and left them there. When I first saw her she had a water-proof dress on. I think there was a hood on the dress over her head; could distinguish her features; she did not hide her face at all. I told her to put her veil over her face after I had charge of her. The pistol I got from Captain Bushnell; it is called a four-shooter; there was one charge out of it.

Cross-examined: After I took her on deck she said she was subject to spells; would like to have some drops that her physician was in the habit of giving her. Mrs. Fair when arrested appeared very much excited; she was talking about her daughter being ruined. One general theme of her conversation until lodged in the city prison was, "I am ruined and my daughter is ruined".

William E. Bushnell: Was Captain of the *El Capitan* in November. The first I heard of this matter was the report of the pistol. Saw a man sliding like from the seat and a lady by his head. I inquired what was the matter and she said a woman had shot Mr. Crittenden. When I first arrived up to the head of the stairs some one said, "Throw the pistol overboard" and I saw a pistol just in front of me in a boy's hands; I took the pistol from him; I met Captain Kenzel and handed it to him; he had this lady in custody who was said to be a Mrs. Fair; did not know her. Went back to Mr. Crittenden. I got a mattress from out of the lower cabin and laid him on it. He was unconscious; he did not seem to know anything at the

time, from the first time that I saw him.

F. P. Dann: Was on the *El Capitan* when Mrs. Crittenden was shot; was present when Mrs. Fair was arrested. The only words that I heard her use that I now recollect were, "I do not deny it". She had a water-proof suit on and a brown veil upon her head. It was dusk so that I could not distinctly see her face at any time.

Parker Crittenden: Am a son of the late Alexander P. Crittenden; was on the *El Capitan* at the time he was shot; was not present when the shooting was done. My mother was arriving from the East and I was taking care of the baggage. I started up stairs and a man met me and said a man had been shot by a woman. There lay my father on the deck wounded. I said I thought I knew who the party was and started to find her. Saw the defendant; I says, "Captain Kentzel, this is the woman, I accuse her of the murder of my father. I arrest her". Her answer was, "Yes I did it, and I meant to kill him. He ruined both myself and my child". On board the boat with us was my mother, my little sister, and my brother, and the wife of Captain Fithian of the U. S. Navy. My mother and sister arrived that afternoon and my brother went over in the boat with me. My father went over in the boat after. I met them at San Antonio and he met them at the wharf. Mrs. Fair from the time of her arrest up seemed composed for a person who had committed such an act. Father died at six o'clock Satur-

day evening; he was shot at six o'clock on Thursday evening.

Cross-examined: Am twenty-two. I recognized her before I addressed her; I had seen her before; I knew her; do not think I have ever been in her room; may have been in a friend's room in the same house. My brother and myself once were aroused in the middle of the night by my mother saying that somebody was at the door; saw Mrs. Fair there and she said that she wanted to see my father—that she would see him. One of us, my brother Howard or I, said we would put her off the steps if she did not leave. She refused to go and threatened to do some injury if I brought a policeman up. I escorted her and left her at her home at the door. On the way she said there had been some marriage arrangement between her and some person and father had broken it off. Knew he had been on intimate terms of friendship with her for a long time.

March 29.

John Boch: My business is gunsmith. I believe I traded this pistol with Mrs. Fair for another one, four days before this occurrence that I read of in the paper. I sold her a pistol some months before—a five-shooter. She thought the other pistol was not good for her. It was in the day time.

Cross-examined: The pistol she brought back was a little larger one. At the time she bought that other pistol she said that there were boys who would break into the house and she wanted it to defend against them.

J. A. Woodson: Am an attorney in this city. Was on board the *El Capitan* at the time Mr. Crittenden was shot, in company with Mr. Dann. After the shot was fired I went out upon the deck, recognized Mr. Crittenden and some members of his family; saw the Captain pass where Mrs. Fair sat. Mr. Crittenden said, "There is the woman" or, "That is the woman", upon which she arose and I recognized her, having been acquainted with Mrs. Fair some years ago. Immediately after she arose he said, "I charge you with killing (or murdering) my father. She walked directly toward Captain Kentzel who was the most prominent person in the crowd and said, "I don't deny it. I have been looking for the clerk of this boat or some one who is an officer." Then I think that she said to Captain Kentzel, "Are you an officer or are you the person?" He made some brief response and took hold of her hand. Immediately after saying "I don't deny it" she said, "He ruined me and my child". I believe that is all. She was in a state of suppressed excitement, or resigned excitement; if there would be such a thing as calm excitement, that is it.

Cross-examined: When I first saw her she was unveiled, before Captain Kentzel came. She was among the ladies who were sitting on the bench but I did not recognize her till she rose up and showed her height. She is rather a tall woman.

J. W. Wilbur: Am a house carpenter; was on board the *El Capitan* on 3d November; heard the shooting; saw the lady ar-

rested. A young man said to her, "I know who you are, you shot my father". That is all I heard him say and then she was taken out to the pilot house. She says, "I don't deny it, I have reasons for doing it".

A. McDonald: I live in Folsom street; drive a hack in this city. Mrs. Fair engaged me to go to the boat the day before. She told me to be down to her place in time to take her down to the boat; to wait there until she arrived back again on the six o'clock boat.

Cross-examined: Had been in the habit of taking her to the San Jose cars when she went to San Jose to see her daughter.

Charles Volberg: Am an upholsterer. The last time I saw Mrs. Fair she paid me some money and she spoke to me about her troubles with Mr. Crittenden and asked me if I was furnishing a house for Mr. Crittenden. She said that Mr. Crittenden had promised that his wife should not return to the state. That if she did "one of us three should have to die," Mrs. Crittenden, herself, or Mr. Crittenden. That was on 5th October.

Cross-examined: I had previously furnished rooms for Mrs. Fair—her bill was about \$600. Have brought a suit against Mrs. Fair for it which is pending now. Mr. Crittenden told me one day he would pay for one carpet, but subsequently he would have nothing to do with it. She spoke of her wrongs to me; that Mr. Crittenden had promised to marry her; that he had promised to keep his wife from the State and that if she did come back "one of us three

would have to die". I told Mr. Crittenden, "Now, are you quite sure there is no trouble about your lady coming back?" Said he, "What do you mean?" Says I, "Mrs. Fair has told me she might do you some harm if your lady was to come back again." Then Mr. Crittenden said, "That is all right; there is no trouble about that." That was the day before the shooting.

Thomas T. Crittenden: Am a son of the late Alexander P. Crittenden; was on the *El Capitán* at the time he was shot; was with my mother, my sister, and my father; my brother was down stairs. Was sitting on the left hand side of my father when a woman dressed in black walked in front of him and did not stop at all but took out a pistol and fired and then walked away towards the cabin door—did not see where she went.

Cross-examined: Did not know the woman; did not notice her face after the shooting so as to be able to recognize her.

Carrie Campbell Crittenden: Am a daughter of the late Alexander P. Crittenden; was in the seat by his side; saw this woman come up near to where mother was and stand; saw her lift her hand from under the cloak which she had on and the next thing I heard was the report and the flash. I did not recognize her but I knew who it was.

Laura Sanchez: Am a daughter of the late Alexander P. Crittenden. Defendant came to father's house in November, 1869 between 12 and 2 o'clock at night. She called for my father to come down stairs and see her, which he declined at

first to do. Afterwards he went down; then she came up stairs and made an appeal to him; said he was not kind to her and had never treated her in that way before. He told her, "You women have unsexed yourselves, and I utterly abhor and despise you". Then he came up stairs and went into his room. Heard her say to my brother when he sent for a policeman, "Take care, Mr. Crittenden, there will be blood-shed here".

Clara C. Crittenden: Am the widow of the late Alexander P. Crittenden. Was his wife not quite thirty-three years. I arrived from the East on 3rd of November; met my husband on the wharf; we went together on board the steamer. We took our seats near the wheel-house, my husband, my daughter and my little son; saw sitting against the cabin a woman with a waterproof cloak on; thought it was a strange dress on a bright, sunny afternoon; had turned to my husband and put my arm through his when the flash and report of a pistol were in my face. Looked up immediately and saw this same woman. My husband said, "I am shot"; he got up and walked a couple of steps steadily and then commenced staggering with my arms on him; saw he was terribly injured and put my arms around him and as he fell on the deck I sat down and held him; my son who had been sent for the baggage, in a short time returned and I said to him that his father had been shot and told him who had done it, because I knew that these threats had been made years before. Staid with my husband until

the boat was clear and then went with him in a wagon which took him home to his own home.

She came to my house about November, 1869, about 11. We heard Howard unlock the door. My husband went to the head of the stairs and saw this woman attempting to come into the house. He spoke to Howard and he says, "Don't let her into the house." He went part way down stairs and she insisted on seeing him. He said, "I will not; it will be only the same thing over again and I will not go with you. I am tired of it; I am utterly disgusted with you; you have unsexed yourself, you and your mother both." He said, "I will send for a policeman if you don't leave here". Whereupon her reply was, "If you do there will be blood-shed".

Cross-examined: My husband asked who shot him on his death bed. I first met her at the Occidental Hotel seven years ago this coming September. We occupied adjoining rooms there; was introduced to her there by my husband. Next met Mrs. Fair personally in her house in Virginia City, January of the following year. I was on a visit to Virginia. She was living in a house with lodgers, having rooms above and my husband lodged in other rooms. Next met her personally in Virginia that summer. I went to her house contrary to his request; I gave my reasons to him that she had been polite to me when I was there in the winter.

Cross-examined: Subsequently my husband said, in the presence of myself and a gentleman,

"I apologize for the manner in which I treated her on such a night". He made the apology to a gentleman sent by Mrs. Fair.

March 30th.

James W. Markley: Am seventeen. Was on the boat. Heard the shot and rushed up stairs and saw Mr. Crittenden lying in his wife's arms and I heard her exclaim, "Oh, my God, my God, my husband is shot". Several gentlemen and ladies were seated on the bench attached to the wheel-house; they rushed into the cabin. Several gentlemen collected around Mr. Crittenden. One gentleman had a pistol; he was stooping down as if he had picked it up and I asked him to let me look at it which he did. It was a Sharp's pistol with four chambers. I gave the pistol to Captain Bushnell. Heard his son exclaim, "That is the woman that murdered my father". She answered, "I don't deny it, I don't deny it, for he ruined myself and my child", and she repeated that constantly and the Captain of Police told her to be quiet and took and seated her on a bench attached to the pilot house. This is the pistol.

M. J. Bird: Was on board the *El Capitan* on the third of November last; heard the shot; made my way through the crowd and found a man lying on the floor. Opened his vest and shirt and found a gunshot wound in the right breast just above the nipple. There was no perceptible pulse and he was unconscious.

Jonathan Letterman: Am a physician and surgeon and coroner of this city and county.

Held a post-mortem examination on Alexander P. Crittenden. I found a gunshot wound immediately over the right nipple, penetrated the right lung, passed through the right and left auricles of the heart, through the left lung, striking the 8th rib and lodging between the eighth and ninth ribs, where the ball was found. With the exception of the mechanical injury caused by the ball the heart and lungs were in good condition. On examining the bowels it was found that he had suffered from inflammation of the intestines—they were in a state of mortification. That wound was necessarily fatal.

W. W. Cope: Was in business with A. P. Crittenden. On the third day of November prior to the shooting Mr. Crittenden and myself tried a case together in the Twelfth District Court. The trial commenced at ten and was conducted on our part principally by Mr. Crittenden. At noon we took lunch together. The trial continued until about three when the evidence was closed in the case. On a suggestion by Mr. Crittenden that he desired to meet his family who were returning from the East the Court postponed the argument until a later day. Mr. Crittenden then left the Court room; he and I walked to the office together; he then went from the office to dress himself preparatory to meeting his family. He was apparently in the enjoyment of perfect health.

Cross-examined: Mr. Crittenden was sick about a month before his death, confined to his room for several days. After he came from his office during that

sickness some days, he complained of being weak.

Jonathan Letterman: (recalled).

Mr. Campbell: Assuming Mr. Crittenden to be in the condition described on the day of the shooting, what would be your opinion as to the immediate cause of his death? The presumption in my mind would be that it was the shot.

Mr. Cook: Might not this inflammation and mortification all have set in after Mr. Crittenden left his office and left the court room on that day of the shooting? It is scarcely possible that a man with inflammation of the bowels, judging from Judge Cope's testimony, could have acted as Mr. Crittenden was said to have acted that day before the shooting.

William A. Douglass: Am a practitioner of medicine and surgery; knew A. P. Crittenden. Was sent for immediately he reached his house. Found Mr. Crittenden lying on his bed, on his back, very pale, his eyes wide open, apparently in a state of partial unconsciousness, moving occasionally his arm; evidently suffering very much. Examined his pulse and found it feeble, fluttering and irregular. He seemed to be in a state of extreme prostration and likely to die very soon. In the meantime some other medical men came. He had had some stimuli—whisky and water or something to support life after the extreme shock and afterwards a small quantity of morphine was administered. Dr. Sawyer arrived and made a more careful examination. We were at a loss to ascertain the course the ball

had taken, but the supposition was it had injured some vital part and that his condition was extremely serious. I visited him many times during the next forty-eight hours, at the expiration of which time he died. Was present at the post-mortem examination. I attribute the cause of his death to the wounds he received. The lungs and heart both were perforated. That wound was necessarily mortal; it would kill most men outright.

Cross-examined: I attribute the inflammation and mortification following it as a result of the shot which he had received. I might regard myself as his family attendant. I attended to his family. Occasionally he had attacks; some six or eight years ago he had attacks of rheumatism, and he had a bad cold and some little irritation, some bronchial irritation, probably some six or eight months ago. He was confined to his house some four or five days, possibly a week. Inflammation of the intestines may be produced by many causes, sometimes an indigestible meal and colic, violent cold taken and instead of falling on the lungs it may affect the intestines. I always regarded him as a man generally of good health. Expressed myself some months previous to his death with regard to some affection of the heart which was supposed to exist. I told him that I thought that unless he met with some accident he ought to live till he was eighty years old.

A. F. Sawyer: Am a physician and surgeon here. Was in attendance upon him when he was shot in conjunction with Dr. Douglass. Found he had re-

ceived a wound in the chest which was evidently a mortal one and the treatment pursued was simply a palliative treatment until the time of his death. Was present at the post-mortem. The cause of his death was a gunshot wound that he received.

Cross-examined: Examined the cavity of the abdomen; there was found mortification of the lower portion of the small intestine. I attribute mortification in this particular case to the loss of blood, to a great extent, and loss of vitality of the indi-

vidual and the death in the intestines was only a part of the general death which ensued. Do not believe there would have been inflammation or mortification if it had not been for the gunshot wound.

Rodmond Gibbons: Knew Mr. Crittenden. Was on the boat in which he went over to Oakland on the occasion when he was shot. His appearance was as to health and spirits very good. He gave no indications at all of being in ill health or having anything the matter with him.

THE OPENING FOR THE PRISONER.

Mr. Cook: If your Honor please, gentlemen of the Jury. We have been engaged for four days in the trial of a very important cause. Its importance is understood of course by each of you as well as by the counsel and the Court. The great responsibility that I feel upon my shoulders, that I feel hardly adequate to discharge, I ask you to share with me, and to listen carefully, seriously, and attentively with an ear to hear and be convinced and with mercy in your hearts, to the evidence as it shall come to you, in behalf and on the part of this unfortunate prisoner.

Gentlemen of the jury, the defendant met the deceased in the year 1863 and from that date their relations have been of the most friendly character, with very few interruptions. Mrs. Fair, for ten months after her introduction to and acquaintance with Mr. Crittenden was unaware of the fact that he was a married man. It was a matter that he concealed from her and in those moments he gained her affection. I shall be able to show you, by incontrovertible evidence here, that no two living beings on the face of God's footstool ever cherished for each other greater, more sincere, or deeper love than these two did, from the evidence of witnesses, or from the mouths of witnesses, but I will give it to you by an abundance of written evidence, placed there by the hand of the deceased, Mr. Crittenden.

After it was ascertained that he was a married man, he made protestations to Mrs. Fair that he did not live with his wife, that there had never been any love existing between them, and that he intended to get a divorce, and marry her.

Gentlemen of the jury, from that day down to the day of his death, he has held her as his victim, and prevented her from even receiving the attentions of any other gentleman than himself. Did she go to Havana? His letters followed after her. Did she go to

New York, to Virginia, to Louisiana? His letters—and the most endearing letters ever penned by man—followed her. And then he, in person, followed, and accompanied her in visiting the watering places of the South, as late as 1869. Wherever she was, he was, if not in person, in spirit and in mind. If she neglected to write to him for one day, he would upbraid her in his next letter, declaring that she was forgetting him, reminding her of his ardent, of his warm and sincere love and affection for her. In his own hand he says to her, that “in the name of God, and in the face of heaven, we are as much man and wife as though we had gone through the formal marriage ceremony before a priest.” They had occasional interruptions. You find this deluded woman at night alone at the residence of Mr. Crittenden. Two weeks after that interview at the house of Mr. Crittenden, in the presence of his own wife and family and a gentleman who was there. He apologizes to them for his conduct and his language to her upon that evening when she came there. To his own wife who knew of their relations all the time, he makes an ample apology. Why? They had at that time by reason of his having made promises and fixed the time—no less than three times had he fixed it—that he should go to the State of Indiana where he was to procure a separation from his wife, and they should become man and wife in reality. The only thing he waited for was to be able to leave his wife a competency because he did not want to leave her without means. And whenever he fixed the time he could not go, that was his excuse for not going. You have heard it intimated here by the evidence for the prosecution that he had broken off her engagements. So he did. He would not let her go freely and have anything to do with any other man, or marry any other man.

Gentlemen, on that night she said to him: “Mr. Crittenden, you have been holding me in bondage for years. You have made me frequent promises. Now I want this night before you leave my house to have a decided answer. Will you marry me? If you do not we will separate and I will never speak to you again or you to me.” That is the language she used. He rushed out of the house refusing to give that answer and he went to the house where his wife was. Why, gentlemen of the jury, at one time he fixed the time with definiteness, so clearly that there could be no doubt of it. He said, “I want you, Mrs. Fair, to go and prepare, and have your dresses made in that time, so as to leave for Indiana. She did so, and had clothing made which was not suited to this climate, and which cost her five or six hundred dollars, and it lays in her trunk now. Not one garment of it has she put upon her, but they were made in accordance with the positive agreement of Mr. Crittenden that they should go to the State of Indiana and be married. Finally, she said to Mr. Crittenden, “You have nothing to leave your family, and, God knows, I do not want them left without anything. I have money in the bank of my own, and I will take every cent I have got there, except enough to carry you and me to Indiana, and make a present of it to your wife, so that no longer shall that be an

impediment." After the interview at the house—and you will remember the apology that was made—within two weeks after, he wished again to renew their relations, and she refused. She was finally prevailed upon by Mr. Crittenden's friends to again meet him, and she consented to it only on one condition, and that was that as he had grossly abused her, or had grossly insulted her before his family, he must make a full and ample apology before she would consent ever to meet him again.

They had another rupture, gentlemen, and during its continuance, Mrs. Fair, having been thoroughly disgusted with these disappointments, in a moment of frenzy, meets a gentleman by the name of Snyder and marries him—takes him to be her husband. Mr. Crittenden could not allow her then to rest in peace. She had cut off the cords that bound them. She had completely severed their relations as was supposed, by something that would make his approaches impossible. But, gentlemen, alas, she was mistaken. She still had that deep affection for him, and he for her. He wrote her a letter stating that "I must see you," and he addressed it to her as Mrs. Snyder, after she had taken to herself a husband. "I must see you to-night. Say yes, and I will come. I can not wait. This night is perfectly decisive of our fate. C. It is now or never." Bear in mind, gentlemen, that he is addressing Mrs. Fair, who had become the wife of Mr. Snyder. "It is now or never. If you won't see me to-night, we shall never meet on earth." So, you perceive, that after she had left him; after she had been married; you find him still following her and insisting upon renewing his associations. Gentlemen, he gained that interview, and what was the result? He told her that she must get a divorce from his man Snyder. He told her how to do it. He told her what kind of an officer to put upon his tracks to watch him, that she might get evidence against him; and he talked to her until she did commence suit for divorce, and she did procure a divorce from Mr. Snyder.

Before this, in 1864, Mrs. Fair went to Virginia City in the fall of that year, and opened a boarding house. Mr. Crittenden became a boarder, and their relations continued from that day down to the very day of the shooting, with very few exceptions, it still continued.

Gentlemen, of these things Mrs. Crittenden was fully aware all the time. She substantially told you that when she was upon the witness stand. She told you that Mr. Crittenden had his rooms with Mrs. Fair in Virginia City and she stopped somewhere else; and he requested his wife not to call upon her which injunction she disobeyed and did call. She remained a week in Virginia City, Mr. Crittenden remaining at his rooms and she staying down at her daughter's. Mr. Crittenden knowing that his family were to be here within two days went to the house in which Mrs. Fair had rooms and took the adjoining rooms and had them furnished, and they were on the most friendly terms on the very day of the shooting. Mr. Crittenden, after he took his family home that night, which he said he must do out of respect to the world, was to return to the room he had taken two days before and make that

his lodging place. She had no thought of killing him, she expected him that night. Within an hour before the boat took Mr. Crittenden and Mrs. Fair over the bay that night they were together at her own house, at her own room, or the room he had taken the day before. Mrs. Fair had asked him how he was going to meet his family, whether cordially or coolly and his wife in particular. He said he should receive her coolly, should take her home and take dinner and then return. He had said when she had left this State she was never coming back again, but she did return. One hour before the boat left they were together. She was going down to the boat and across the bay to see the manner in which he met his wife and to see whether he kept his word or not and for no other purpose. She had no more idea of shooting that man then than I have of putting a ball through one of you. She took her hackman who had been accustomed to carry her and she carried a pistol, which she had been taught to carry by Mr. Crittenden who told her never to go without it. Then she arranged with her hackman to take her back to her house. Did she expect to shoot somebody, and be arrested and incarcerated that night? She fired but one shot from that pistol, and dropped it down where she stood. If she had wished to conceal anything would she not have thrown it a distance of two feet into the waters of the bay? Take all these circumstances, gentlemen of the jury, and you see that there could have been no such thing as her perpetrating premeditated murder.

Now, gentlemen, we come down to the great question in this case, and I shall satisfy you beyond any question of doubt, that Mrs. Fair, at the time she fired that fatal shot, was not a responsible agent—that reason, for the time, was dethroned. Shoot the man she loved!—the man she adored above all other living beings, when the object of her hatred, if she had any—Mrs. Crittenden—sat by her side, and she might have blown her brains out! Shoot the man who, only the day before had taken rooms with her! And they had taken their meals together regularly, day after day, two weeks before the shooting. Shoot Mr. Crittenden, the man who “was the ocean of the river of her thoughts”—her very self, her own existence, all she lived for; her own existence, her life centering in his being!

I say we shall show that Mrs. Fair was insane. First: there is such a thing as total intellectual insanity; next, there is such a thing as partial intellectual insanity; next, as total insanity; and next comes moral, and partial moral insanity. And we shall establish before you that Mrs. Fair, not only at the time of the shooting, but for twelve months before, at stated periods was not a responsible being. She had what is called partial intellectual insanity, and partial moral insanity. We will show you that she was a very nervous and excitable person; that for twelve months prior to the commission of this act, Mrs. Fair’s insanity first appeared prominently; that from that time down to the present day she has not had a menstrual term without becoming a perfect maniac—furious. We will show you that at the time of this shooting she

was in the condition of what is called retarded menstruation; being two or three days past the proper period for its appearance; being at the time when all medical writers say it will be the worst. She was in that critical, unfortunate condition the day she crossed the bay and shot Mr. Crittenden. We will show by medical authority and medical gentlemen that this is one of the diseases that is recognized universally as insanity of women. I will also show you her sleeplessness; lying awake for three or four weeks incapable of sleeping, immediately before Mrs. Crittenden arrived. This is one of the strongest evidences of, and one of the things which produces insanity—the want of rest and sleep. The mind was upon that one topic and nothing else. Whenever that was broached she would go off like a flash of powder touched by fire; that her intellect was impaired; that her emotions and impulses were strong; that they at times overwhelmed and controlled her intellect; that her impulses were of that character that made the doing of an act utterly irresistible; that it was an utter impossibility for her at the time Mr. Crittenden was shot to have prevented it, as it would be for a rabid dog not to bite you if he met you in the street. As Judge Beardslee says, an eminent jurist of New York: “If the act itself is an insane act, it is strong evidence of the fact that the party was not in possession of his full faculties.” Was this an insane, or a sane act—going publicly on board of a steamboat, surrounded by hundreds of witnesses to see her commit the crime, in a place where she must know there was no possibility of escape, and then committing this act? Going to parties in a state of frenzy, and telling them: “Oh, if she comes back here, one of the three of us must die!” Is that the act of a sane individual? Is that the act of intelligence—of an intellectual person—to go about to the friends of the party she intends to slay, and tell those friends, “I intend to slay your friend.” Is not that an insane act?

Look at her conduct on the boat. Did she act like an insane person? She said, “I shot him.” She repeated that whenever she spoke at all on boat and nothing else—that being the only thing that was foremost in her mind till she was brought to the station house. Before she left the boat she said she was going to have a “spell.” In the station house she lay from Thursday until Sunday utterly unconscious of anything, not recognizing a soul—even her best friends. She continued in that condition up to the twentieth of December—only having minutes or hours perhaps of lucidness after the shooting. We will show you by the physician who attended her in jail that it was not feigned insanity, that it had characteristic marks that no living human being could feign; that she was carefully examined to ascertain her true state there, and that she was absolutely insane and bereft of reason.

March 31.

Mr. Cook: In investigating the charges of crime the very first thing that naturally suggests itself to the human mind is, what motive had the accused for the commission of the act charged against her? What earthly motive had this party to commit that

act? Gentlemen, the motive was all the other way. Her motive would have been in her sane moments to stand and place herself as a living shield between Mr. Crittenden and danger from any source. Her motive would have been and was to protect his as sacredly as she would protect her own existence; to save him from the hands of violence from any source and particularly from her own delicate hand. This would be the case if she had full possession of her intellectual faculties and they had their sway and their working at the time of the commission of the act. If the act were premeditated who was the person against whom she would have pointed that deadly aim? It was the wife of the deceased who sat by his side at the time; the only intervention between herself and Mr. Crittenden. But the fact that she shot past Mrs. Crittenden and killed the idol of her own heart—is not that the strongest evidence that could by possibility be introduced to re-establish the fact that reason had been dethroned? If she had had her faculties in full play, I say he is the last man she would have killed. She would have killed the party sitting between her and everything she loved. But in a moment of frenzy—a moment of irresistible impulse—she slays the man whom her fancy in that condition—seeing her with her arm through the arm of the one whom she loves—her fancy brings it to her mind that Mr. Crittenden has injured her and that idea rushes upon her suddenly, and in the frenzy at that moment, the everything that has occurred between them is brought up; his promise not to bring his wife back to the State, his bringing her back—it was then that she imagined that Mr. Crittenden had done her wrong and she fired the fatal shot. Gentlemen, that is the true secret of this case.

You do not sit here to try and ferret out and find evidence that will hang this woman. You sit here on the contrary, with the presumption of the law, that beautiful presumption of the law, which is written in indelible words over the portal of every court room: "The prisoner is presumed to be innocent until found guilty." You sit there to see if you can excuse this act upon any theory except actual malice on the part of Mrs. Fair. You will, with pleasure, gentlemen, if you can, from any facts in this case, find anything which exonerates her from that terrible charge.

The object of punishment is to restrain other evil doers. It is not to punish the innocent. God knows that the infliction of insanity upon an individual is suffering enough for one person, in this world, and how thankful every one of you must be, and I am, that we are permitted to retain our senses, when so trivial, so small a thing may throw us off our balance.

The human system—the brain—is like a machine; is like a clock, or a watch. You knock one cog out of a wheel, and the whole thing is out of order. You displace one thing in a piece of complicated machinery, particularly as complicated as the human system, or even taking the ordinary machinery within our observation, and the whole thing is unfit for the work for which it is intended. It is so with the human mind. One thing going wrong,

all goes wrong. Insanity has been induced by simple indigestion, by a few sleepless nights, by one great, overwhelming disappointment, by hope blasted. Trifling things, and one thing alone, has been sufficient to dethrone the human mind—the reason—leaving the body with only a skeleton of a mind to carry out its earthly existence.

I will read a few words to you here, which will give you a very correct idea of my theory. Before I read it, however, I will call your own minds, gentlemen, to your daily observation. Probably cases have fallen under your observation of the weakness of the human mind, the intellect. You know the fact that emotion will suspend the working of the intellect for the time being. It outruns the intellect—overcomes it—and it becomes dormant, and the emotion takes its place and acts while the intellect is dormant. Take a familiar case of a building on fire, and a man's wife is in the centre in flames—and the man, like a maniac, rushes in, when everybody who sees him, and who has his reason about him, knows that if he goes in there, he never will come out. Still, he rushes into the midst of the flames, to save his burning wife and children. There the emotion, the impulse, has gained possession of the active intellect—because, if he could stop for one moment to reason, to bring the intellect into play, he would say, "How foolish it is for me to burn myself to death, with no chance of escape, and leave my children both fatherless and motherless." That is a case of strong emotion, strong impulse; he is governed by an irresistible desire to save her who is about to perish, and the impulse is irresistible.

I will now read you from Dean's "Medical Jurisprudence":

"Irresistibility, where it arises from deranged or perverted action, should absolve from all accountability, because—

"1. The act is unavoidable, and the actor therefore no more a subject of punishment than a machine for going wrong when some part of its machinery is out of order. To administer punishment under such circumstances, would shock all the moral sympathies of men.

"2. One of the purposes of punishment could never be answered by it, viz: the reformation of the criminal. If the act be irresistible, the whole effect of punishment upon the individual must be lost.

"3. Another of the purposes of punishment would remain equally unanswered, viz: the salutary effect to be produced by it upon the minds of others. That effect, instead of being salutary, would be in a high degree injurious, as it would shock all moral sensibilities, and create a horror of the law itself which could thus needlessly sacrifice life, without answering any good end or purpose.

"But suppose this principle admitted, another grave subject of inquiry presents itself, viz: How is it to be applied in practice? What are the tests of irresistibility?"

Little direct evidence can be expected, and the indirect is unfortunately less clear and conclusive than it ought to be. It is gathered principally from the nature of the act itself; the circumstances

under which it took place; the things and events that preceded and succeeded it."

Mr. Crittenden was a man of family; he had been married thirty-three years. No man can have sympathy for Mr. Crittenden. I will not speak harshly of the dead—let their deeds be buried with them—and I shall not advert to Mr. Crittenden in this case on a single occasion unless it becomes my duty to do so in defending and protecting from the gallows the party whom I represent. I, in common with you and all, have a feeling of sympathy with the family. We all must feel that they were not to blame for the acts of the husband and father. But I will ask you, gentlemen, in all candor now, and in moments of serious and honest reflection, whether you can think the family have lost much when it lost the man who had so far forgotten his marital relations, so far forgotten his duty to his family, as publicly, in the eyes of his own wife, in Virginia City, years ago, to allow her to live in one part of the city, and he in another? Who brought this about? Who gained the affections of this defendant? Who trifled with the affections, until he drove her to a fit of desperate insanity? He is the accountable being for this act. He brought it upon his own head. He has not only ruined her, but he has made of her almost a maniac. Hence, gentlemen, it will not do for you, when you get into your jury room, to find fault with Mrs. Fair for having become attached to a married man. Her affections became attached before she knew he was married, and you all know, from what you have seen in this world, that when once the affections become seriously and sincerely attached to another, no barrier can stand between them, even that of a wife or husband. True love, true and sincere affection, becomes the perfect master, captain, and controller of the heart, for the time being; it becomes death to resign the object of the affection; the mind is entirely absolved from the thought of relations the being of her love bears to others. Mrs. Fair was under no pecuniary obligation to Mr. Crittenden in any way whatever; what she had amassed was the earnings of her own investments, and upon her own capital; she did not receive any money from him, and she did not select him for any mercenary purpose. It was not because she was living upon his money, or his riches; because what she had, she had earned. Whenever she loaned Mr. Crittenden money, he repaid it to her as a business transaction—and therefore the idea which has been promulgated in that respect is unfounded. You all said you had read the papers before you were impeached in this case. They stated that Mr. Crittenden had supported her, and furnished her money.

Gentlemen of the jury, the prosecution itself has placed evidence before you of the character of the shooting, of the want of motive—all of which I have related—from which if you went to your jury room now you could not conscientiously allow yourselves to convict Mrs. Fair even without another iota of evidence in this case—next we shall add to that evidence as to her insanity, by establishing the facts which I have already detailed; and gentlemen, if we do

add these facts to those of which you are already in possession, I shall remain here while you retire to your room, trusting and hoping that your return will be speedy and we shall hear from your lips those consoling words, "Not guilty."

THE WITNESSES FOR THE PRISONER.

Mr. Cook offered in evidence a large number of letters and telegrams written by *Mr. Crittenden* to the prisoner.

Mr. Campbell: We object. (After argument by counsel on both sides).

JUDGE DWINELLE: I am not aware of any case where authorities have gone so far as to allow correspondence of that character, except where a husband has been indicted for homicide, in killing the seducer of his wife, or the supposed seducer; of a father in the same relation in reference to a daughter; or a brother or some near relative. Probably it would extend to the case of a guardian and his ward—a man who had adopted a daughter. So far as this Court is concerned it will not be the first Judge to pronounce that correspondence between a mistress and married man can be put in evidence to show that she was insane, particularly where there is evidence to show that she was a married woman at the time, and not only that but a woman who had been twice married.

Jane D. Morris: Have been for eight years a ladies' nurse. Was called upon to nurse Mrs. Fair, Saturday, fifth November, between 11 and 12 o'clock, at the city prison. She was in a perfect state of unconsciousness and she kept so until between three and four o'clock in the afternoon. I tried at different times to get medicine down her that the doctor ordered, but I could get nothing down. Saturday at about four o'clock I managed to get down a spoonful of beef-tea and she threw it up again and after that she raised up and began to pull her hair and tore it so much that I saturated her head with cold water in accordance with the orders I had from the doctor, and kept it on her head. She seemed to be in a perfect fit. Her mouth was closed tightly and she did not move. I took a vial and poured

out the drops and sweetened it and put water to it as usual and tried to get it down her mouth. All at once the goblet came into my hands and I heard a crash and I noticed that a large portion of the goblet was out of it. Being afraid she might have got the glass in her mouth I knocked at the prison door to get the people there to relieve me. She sat up in the bed and I thought she might do something to her or to myself, having many glasses and bottles there. Knocked again and repeated it for about fifteen minutes; I was so much afraid that she would injure me or herself and I had a knife then which I held in my hand to defend myself from her, because I was actually scared. At last Captain Douglass came with an officer and it took the officer and I both to hold her and keep her on the

bed. She was moaning continuously and sobbing but she never said a word that I could understand. We had to give her three different opiates before we could quiet her. The next morning at six she waked up and seemed to come—to, somewhat more than she had done. The doctor spoke to her. She said, "No, I know where I am; you are trying to make me out sick, and you are not going to keep me in here. I must go; I must see him". She kept on repeating those words. Don't know whether she saw me or not; don't think she did; her eyes did not have the light of a rational being. I don't think that she realized that any person was in the room. Next day, Sunday, she seemed to be in about the same stare. She would not speak any, but was moaning continually and seemed to be as if she were talking to herself. She wanted to get up and be dressed, and she asked me to give her her clothes. I told her I could not do it. She asked me the time, and I told her what time it was, and then she said, "Then it is morning." I said, "No, it is evening." And she said, "I must get dressed. I don't want to disappoint him; he expects me, and I am not dressed at all. Now give me my clothes." I would listen to her, and would try to speak kindly; and before she would say anything she would go off half asleep; and she kept moaning and groaning all the while; once in awhile she would sob. Then she would rise up and say she must go; he was waiting for her. Then she would go off half asleep again. Thursday was the most rational day with

her so that when I was reading a letter she says, "Are you a married woman?" I told her I had been, but I was not now; told her I was a widow indeed. Told her, "I am not a woman who has been divorced from her husband or a woman whose husband had left her. That is what I call a widow indeed." She looked at me and never said a word. Then she commenced calling for her little child. She said, "Oh my child, my child! God help you with your children!" and commenced in the same way as before, groaning and moaning. During that day I got down a little nourishment, two or three spoonfuls of beef-tea. Thursday I asked her what she would have for dinner. She said "Oh nothing, but something that will be cold in my mouth". I asked her if she would have some ice cream. She said no, and wondered if they could give her some strawberries. When they came she took two or three of them in her fingers and that is all she touched. She did not seem to relish them. I staid in the city prison from Saturday noon, November fifth, till a week from the following Monday, when she was removed to the county jail. She seemed to be improving a little every day, gradually. She ate a little bit more but was still wandering off; it would only be for a short time that she would talk. She would say, "Darling, my dear one" and "How much I have suffered and ought to suffer more for your sake". That she said two or three times, but she would always call the word, "My dear" and "my darling" and "my loved one"—kept re-

peating that all the time. She said "My little child—my little child, I wish to God I could see you. Oh if I could only clasp you to my arms once more; but I will die first before ever I see you here". One night she seemed to be very calm and composed. About 11 o'clock there was a band struck up under the window; the music was exceedingly delicious and I wondered if she heard it. The first I knew she flew right to the window and got between the window and the bed there and got hold of the bars and held on. I put my arm around her waist and tried to hold her and tried to force her away from the window. She was screeching; I could not do it she held the window so firmly. I managed to get her into bed and covered her up and she commenced speaking then and she says, "Oh my darling, you told me the truth; you always told me that when I was troubled and weary and heavy laden, you would send them for me to listen to and you did it. You told me the truth and you love me still." I gave her chloral and she went to sleep. The next morning at the breakfast table I said, "Have you slept well?" She said, "yes," she had had a beautiful sleep, "I had beautiful dreams." And she told me that her dream had been of a beautiful, far off place and there was a kind of gulf between her and him and when she got near, about to the place, there was a space that was marshy and she could not walk over it and she saw him there and she said, "When I went to jump over it to meet him he was gone; he had been there

and he was gone". I did not ask her who it was and she did not mention his name.

She never had a quiet night's sleep except she was under the influence of chloral, and even then she would frequently start up. Have seen Mrs. Fair since I left her at the county jail. Have seen insane people. Have had the care of one lady in this city about three months—a physician's wife. Also had my husband for eight long years. From what I saw of Mrs. Fair I thought she was insane at times.

Cross-examined: The first time she spoke after I went to see her she asked me for a drink; the next she spoke was when I gave her her breakfast after the doctor had left the place Sunday morning. I asked her then to drink some beef-tea. She said, no, because it was too fatty; she did not like it. She did not talk much through the forenoon, but she commenced speaking about 11; she thought at that time Mr. Crittenden's funeral would take place and she wanted to get up and go to the funeral; wanted to get herself dressed; she said she wanted to see him before he was covered up in the ground. It took all my exertions and strength to keep her down. On Monday forenoon she said she wanted to see him—wanted to go to him; she said how cruel they were, cruel-hearted wretches, cruel-hearted beings, to cover him up in the ground without allowing her to see him. She seemed to think she had seen him and then that they had refused to let her see him, or something like that. Monday evening she said wanted him to forgive her and

after that she said, "You have forgiven me" and clapped her hands and laughed and said, "I knew you would; you always loved me truthfully; I knew you would forgive me and now all I wish is to die—to die and be happy". She alluded to the cold, damp clay being on him. After Sunday she seemed to drop the subject entirely; did not say anything more about it. On Wednesday she laid still in an unconscious state, groaning and moaning. On Thursday was the first time she spoke or realized anything; then she spoke more like a rational person. On the morning of Thursday was the first I conversed with her about anything. The following Monday or Tuesday her mother called to see her. She seemed to be broken down entirely when she saw her mother; they both wept and embraced each other a long time; was afraid she would have another spell. I did not hear their conversation. I sat outside of the prison door and she sat on the bed alongside of her daughter. On Wednesday a gentleman called; I do not know his name, he was very tall.

Judge Quint called between that and Sunday; that was the only company she had except the doctor and her mother. Wednesday the reporters were outside talking to me and she demanded to see them. I told them they might go in and speak to her and they went in and talked to her a few minutes.

Letitia Marillier: In November I kept a lodging house on Kearny street; Mrs. Fair took rooms about two months before the shooting—a bedroom and a parlor—up to the Monday prior

to the shooting, then gave up the parlor to make a bedroom for Mr. Crittenden. He payed his rent for it a month—\$40; said he wanted it next to Mrs. Fair's, so he would not sleep in the house with his wife; that she would know it. Saw Mr. Crittenden there prior to that time, several times, in Mrs. Fair's room and in the hall. About four o'clock on the afternoon of the shooting saw them in the hall. Mrs. Fair's dress I think was a black silk. She returned again for probably ten or fifteen minutes. The only thing she said to me was that she was going to see the meeting. I gave him the night key—he said it might be late; it might be ten or half-past eleven; he did not wish to disturb me; said he was going to meet his family. He had slept there two nights previous. Going down the stairs, I saw him holding her hand, going down the bannisters. She was not well for five weeks before the shooting. She complained of want of rest and very much of her head, and that she could not sleep. On one occasion Dr. Lyford left me some medicine to try to make her sleep. On the day Mr. Crittenden was shot she was very much excited and she cried frequently; she seemed very much distressed and very much in trouble or in low spirits. She told me when Mr. Crittenden's wife left she never was to return; that was Mr. Crittenden's words and he had broken his promise. When I spoke to him he told me that his intention was to marry Mrs. Fair when he obtained a divorce. That was a few minutes before he

left my house. He slept there two nights before the shooting.

April 1.

Lawrence Sellinger: Am a policeman; first saw Mrs. Fair that night in the city prison; Captain Kentzel brought her there; saw her most every day. The night of the arrest I helped to take her into the cell and I staid there till the nurse came in, perhaps an hour and a half. She was very bad, it took at one time myself and officer Jones to hold her; she raised up trying to get out; wanted to get up and acted in a violent manner; appeared to me to be out of her head. She would rave and start to get up and of course I would hold her down; at times she was very strong. Of course a man could not handle a woman as he would a man. Dr. Lyford had some medicine or something to give her and it was very hard work to give it to her and he put the tumbler to her mouth and she bit off one piece; bit it out.

Letitia Marillier (recalled): Mr. Crittenden moved into my house the Monday previous to the shooting. He slept there two nights before. He had very little baggage—a small valise—all I saw was his night shirt and brush and comb. The last time I saw him he was going down the stairs. Mrs. Fair was on his arm.

William Y. Douglass: Am Captain of police. First saw prisoner in the city prison. I saw a tumbler with a piece out of it. She was lying on a mattress on the bed; she seemed to me to be in pain—moaning—and I thought she was suffering. I asked her if she had the

piece in her mouth and got no response.

Benjamin Napthaly: Am a reporter on the *Evening Bulletin*. Saw Mrs. Fair about eight o'clock on the night of the shooting. Dr. Johnson the physician of the city prison, Detective Sellinger and Mr. Jones the detective were there. She was lying on the floor and Dr. Johnson was at her head and detective Sellinger was holding her by the feet. She was raving in an incoherent manner, calling out various things and apparently in convulsion, working and striving very hard to get her limbs free, which the doctor and officer were holding down. I heard Dr. Johnson call for a glass of water for Mrs. Fair, which was handed to the doctor; she immediately caught the glass in her mouth and before the doctor could get it away she bit a large sized piece out of it and it was with difficulty that the doctor and Sellinger could get the glass out of her mouth—the piece that she had bitten off. Saw her once after that when she was being conveyed to the county jail from the city prison, after she had been held to answer before the Grand Jury. Was carried from her cell out to the carriage in the rear of the city hall in a chair all muffled up; did not see her face.

Delos J. Howe: Am reporter of the *Bulletin*. Saw her in the cell of the city prison next day after her arrest. There was a nurse with her. She lay on a mattress at the side of the cell and while I was there said nothing. Her eyes were closed and she was rolling her head

continually from side to side and was moaning. Did not hear her say anything while I was there.

April 3.

Edward Cohn: Am a police officer; saw her the night when the arrest was made at half past twelve; she was lying on a mattress with her eyes closed. Asked her whether she desired anything; she did not answer me anything. Asked her whether she wanted a drink of water; she assented by nodding with her head.

Barney Murray: Keep a saloon now in Stockton; have been in the police here. Was on the boat the night Mr. Crittenden was shot; asked me to go and find her little girl. Went and looked around, came back and told her I could not find her; she did not make any answer. I went with her to the prison when she went in there. The doctor came and she was raving. He was trying to unhook her dress to give her some air and she was twitching around and raving. She was crying and calling for her little girl.

Cross-examined: When they were looking for her on the boat she says, "You need not look any further, I did it". I believe she said he ruined her and her family.

W. W. Cope (recalled): Mr. Crittenden, prior to his going East in 1869 told me should leave some letters or papers of various kinds in certain boxes; and he told me with the boxes he would give me liberty. This contains all the papers purporting to have been signed by Mrs. Fair or with her initials.

Wm. S. Jones: Am a police officer. Saw Mrs. Fair the night Mr. Crittenden was shot, in the city prison. She was sitting in a chair by the clerk's desk. She was taken into the inner prison; there was an old lady came there, I do not know who she is. Another came after she left. She was lying on a mattress in the cell and wringing her hands and crying and going on at a terrible rate. It took two of us—officer Sellinger and myself—to hold her down at times. The doctor came in and went to give her something in a glass and she bit a piece out of the glass and tried to chew it up. The doctor got it away from her after a while. She bit a piece right out of the tumbler. She asked for some stimulent that the doctor had been in the habit of giving her, when she was sitting outside. All she said outside was, "Too bad, Too bad"; that he had promised to marry her.

Mr. Cook: I now offer in evidence, the judgment in the case of *Laura A. Snyder v. Jesse W. Snyder* in this court, being the record of divorce procured by Mrs. Fair, then Mrs. Snyder, from Mr. Snyder. I propose to follow it up by evidence that the deceased, within two or three days after the marriage of Mrs. Fair, then Mrs. Snyder, induced her to seek a divorce from Mr. Snyder, he himself stating that he would furnish a party who would procure the necessary evidence, by having this person whom he would procure, watch the movements of Mr. Snyder, for the purpose of entrapping him—get-

ting him to go to houses of ill-fame. I propose to call medical witnesses upon that question, also, of the state of mind of the accused at the time of the shooting, as evidence which physicians say is important to them, as one of the ingredients in ascertaining the true state of her mind, and a very important element—very important that they should know whether or no an association of this kind did or did not exist, of first a marriage and then a divorce; and in connection with the conduct of Mr. Crittenden and Mrs. Fair, prior and subsequent to that act.

Mr. Campbell: I object to the evidence, if your Honor please, for the reason that it tends to throw no light on the possibility of the sanity or the insanity of the defendant. We object to it for the reason that it is simply an offer to slander the memory of the dead and injure his reputation. If it were all true it can not furnish any evidence of insanity on her part. It can not throw the slightest light upon that question. How could it? They have already shown that this defendant married Mr. Snyder in August last, and the proposition here is to show that in October, at the suggestion of Mr. Crittenden at that time, the defendant did obtain a divorce from her husband. How does that prove her insanity in any way? Is this defense—that she shot Crittenden because he induced her to get a divorce from Mr. Snyder? Is that the defense? That has not yet been found as a portion of it.

The case, as opened on the part of the defense, contains the allegations that she shot Crittenden because she loved him so much that she could not bear to see him treat his wife with common respect. I would like to know whether the defense propose to change their ground on that proposition and show that it was because she had a divorce from her husband that she became insane? If that was the case, if her grief over Snyder was such, why then, perhaps it might be one point. It is the only ground upon which the evidence could possibly be admissible; but, on that ground it could not, because there was nothing in relation to Snyder that had occurred anywhere about the time of the shooting. All the associations connected with Snyder occurred in October. She obtained the divorce then and she obtained what she wanted, and it could hardly be recognized as a cause of insanity, it seems to me.

THE COURT: I think very likely this record might be admitted in evidence if the prisoner was indicted for the killing of Mr. Snyder for the violation of his marital vows, but I do not think it is admissible in this case, to show that Mr. Crittenden made vows which were immoral and illegal, which she knew from the nature of things could not be carried out. I will therefore sustain the objection.

B. F. Lyford: Am a physician and surgeon; have been Mrs. Fair's regular physician; have attended her more or less for a year. On the evening prior to the shooting I found

her enemy and suffering from quite a severe attack of retrocent gout. From this immediate retrocession, or metastasis, she seemed soon to recover, however, leaving her with dyspepsia,

constipated bowels, palpitation of the heart, dizziness of the head, and general nervous irritability. Subsequent treatment proved many of these ailments to be more or less chronic, together with antiversion and neuralgic type of dismenorrhea; sleeplessness was an important feature. Her general, universal expression would be at that time, "Do give me something to sleep," and particularly so a short time prior to the shooting of Mr. Crittenden. This condition of *insomnia* was most marked, so much so in fact, as to cause most acute physical pain and anxiety, and the use of the most powerful remedies to induce sleep, and up to the fatal day the patient evidently was suffering from that intense disease to both body and mind, *insomnia*; as was also her system, at that peculiar time, suffering not only from scanty, but difficult and retarded menstruation. At times, when the state of mind seemed to be unsettled, it seemed to be almost impossible to manage her, to have any medicines reach the case; the action of the mind was so intense upon the system as to appear to especially affect those organs.

There were some weeks that she was particularly suffering from nervous enervations, immediately prior to the shooting. The day before the shooting she was in the same state of nervous excitement. The loss of sleep and general enervation which caused the most excruciating pain caused her to tear her hair and scream till she was perfectly exhausted and almost in a maniacal condition. I saw her the morning of the shooting.

Was acquainted with Mr. Crittenden. I frequently prescribed for him. Saw him at the defendant's place. On the third of November I was called to defendant then at the city prison. I found her in a chair leaning against the wall. She was evidently in a state of the highest nervous excitement. The carotid and temporal arteries were beating with great force, a rapid, throbbing movement; the eyes seemed congested; the conjunctiva was congested, showing a fierce rush of blood more or less to the brain. At times she seemed to speak a few sentences connectedly and then there was a flow of bewildered ideas and more or less incoherence followed; that is an incoherent, rambling manner of speech. I administered some remedies. After the administration of the second dose it had the salutary effect of quieting and materially increasing the force of the pulse in the radial artery, and of course lessening the pressure upon the brain, and she seemed more quiet. Still there was a restless, nervous condition, but she was more comfortable than she had been and there was less of this spasmodic twitching. I left her for the night about 11 o'clock. The next morning found much the same restless, spasmodic condition. The pupils became contracted, very small. I also discovered she was extremely sensitive to sound; more or less spasmodic movement during the time noise was going on. I visited her several times during that day and night and during that time there was perfect incoherence. I could not

ascertain by any means within my power that she was cognizant of anything. She continued in this rambling, incoherent condition up to Sunday morning. From that time she had her lucid intervals; she would remain conscious longer each time and so she gradually increased in that way toward the last week. I attended her regularly up to the time of my departure for the East. Dr. Trask was placed in charge at that time. There were, twice to my knowledge when there were tumblers broken by administering medicines; once in my own hands; I attempted to give her remedies and she crushed a glass in her mouth, and on a subsequent occasion she had broken a tumbler I was informed by the nurse and went into paroxysms and caused the

fright necessitating their sending for me at this time. The condition of her eye—the pupil was very much contracted, a thing that could not be forced on her part, by the patient herself; it is an impossibility; it is indicative of extreme sensibility of the brain. She had two nurses.

Mr. Crittenden came for professional advice not long after I commenced treating Mrs. Fair. Being a professional man I never entered any charge against him. There are no minutes made on my books of the date of those occurrences; do not recollect the nature of the first prescription I gave him. On one occasion he consulted me relative to a supposed fracture of the rib which he thought he had sustained by being thrown from a buggy.

Mr. Cook: I now propose to place in the hands of the witness letters from Mr. Crittenden to Mrs. Fair which have all been proved to have been written by him and received by Mrs. Fair.

THE COURT: You propose to substitute the witness for the Court for the purpose of passing upon the admissibility of the testimony?

Mr. Cook: No sir, I propose to put him there as an expert.

(The witness examines letters and hands them to the Court.)

THE COURT: He has read five letters, Mr. Cook.

Mr. Cook: From what letters you have now read supposing these to be letters written by Mr. Crittenden and received by Mrs. Fair and considering her physical ailments of which you have spoken, would the examination of such letters by a medical gentleman be of assistance to him in ascertaining the condition of defendant's mind upon a question of consciousness applying to the alleged shooting?

Mr. Campbell: We object upon the same ground as before, as incompetent, irrelevant, and too remote altogether, as can be seen at once. Suppose, for instance, that one physician should testify that they would be of assistance, and another should say they would not aid anybody? This examination is plainly for the purpose of introducing these letters—for the purpose of doing indirectly what can not be done directly, after what the Court has already ruled.

THE COURT: The objection is sustained.

Mr. Cook: You have heard the testimony of all the witnesses in

the case. Assuming the facts to be true which you have heard testified to, what is your opinion as to the prisoner's sanity or otherwise?

THE COURT: I never knew a case where the testimony was received, and a witness put upon the stand asking him "What do you think of the case now?" and then proceeding to take more evidence and asking a witness "What do you think of it now?" I think the proper course will be to take all the evidence first and not a part of it only.

Mr. Cook: I will reserve these medical opinions until I get in all the testimony I have on that and will withdraw this question now.

Dr. Lyford: *Cross-examined:* Was born in Canada; commenced the study of medicine in Canada; do not recollect the year; had other business and devoted my leisure moments to the study of my profession. Am a graduate of the Philadelphia University. My diploma hangs in my office. Have been in California six years; in Washington City was in the army as a surgeon; how long, I cannot tell you.

There never has been a month that I have not paid Mrs. Fair a professional visit up to the time of my departure for the East. I cannot approximate the number of times today. She many times came to my office. I am not in the habit of charging where persons slip into my office for office advice; and it is very seldom to a patient that I have had any length of time that I make any note of it. It is merely my visits outside. The drug store I sent the prescriptions to was Mr. Moody at the corner of Kearney and Suter streets. Prescriptions that she might have taken herself, might have been compounded elsewhere. Her general course of treatment was to build up the system. During

this condition of sleeplessness I used hydrate of chloral. Occasionally she took compound preparations of valerianate of ammonia and strychnine compounded in such a way as to impart a peculiar effect in that way, together with a tonic effect. Besides tonics and anodynes during the period of two months prior to the shooting I gave hypnotics. Hydrate of chloral is not an anodyne, neither is it a tonic. It is a preparation which has the combined effect of opium and that of chloroform. Its effect is entirely unlike that of opium; it does not produce any cerebro congestion whatever; on the contrary it lessens it, whereas opium does inject the veins of the brain under many considerations—increases the portal circulation, whereas that of hydrate of chloral does not. It has the effect of equalizing the circulation and quieting the nervous energies generally. You may give enough to produce anaesthesia—probably owing to the amount of chloroform it contains.

Mr. Campbell: Will you state in what way this nervous irritability is displayed? By a generally excited, nervous, irritable

condition of the system throughout, both mental and physical, in some considerations of the troubles. In what way did this irritability in her case manifest itself? Sometimes she would be exceedingly capricious and generally nervous and irritable. What did she say that made you consider her capricious, nervous and irritable? Well, because things were not going right generally. What particular thing did she say that made you at those times, consider her capricious, nervous and irritable? It is very hard for a physician to speak of these little technical idiosyncrasies of females. There are many ways in which these things are exhibited. There is generally nothing going right and they are generally nervous, in an unsettled state of mind. Will you tell us one single thing that she said or did at any of those periods which made you consider that she was in a capricious, nervous and irritable state or in an unsettled state of mind? Well, very few things seemed to suit her at that time. All the surrounding circumstances would seem to influence her very much. Any little thing that occurred would make her completely nervous and off guard. State one thing she said or did and state all she said or did. That would be a matter of impossibility; I could not begin to do that. Tell us of something that went wrong. Well, she could find nothing that would suit her taste. She would think that I was not giving her as much attention as I ought to as a physician and all that sort of thing. Had she been confined to her bed at all at any time

within the two weeks prior to the shooting? In the general acceptance, there were certain times of the day when she was unable to be out of her room and times when she was suffering most acute pain in consequence of nervous excitation; and then she was not fit to go out. The times she was suffering so much from nervous irritability she was not in a condition to go out shopping. Was she at any time two weeks previous to this shooting? Oh yes, a lady has to be very sick that cannot go out shopping. Say from the 1st to the 3rd of November was she at any time so sick that she could not go out shopping? From the 1st to the 34rd of November—I should think not. You do not think she was so sick as to prevent her going out shopping? I many times made that a special injunction upon her to go out even at her disinclination.

Mr. Crittenden often told me to give her as much attention as possible. He never came into my office that he did not inquire for her; wanted to know how she was and what was her state. He said to me, "You understand the relations between myself and Mrs. Fair? It is unnecessary for me to say anything further", and that I was not to cross her in anything she wished. I spoke of her peculiar nervous irritability and he says, "Do not cross her in anything."

John B. Trask: Have been a practicing physician and surgeon since 1846. I knew Mr. Crittenden during his lifetime as one individual would pass another on the street. I was acquainted with Mrs. Fair in a professional

way about three years ago; she came to my office once with her daughter to be treated, that is to treat her daughter. Did not treat her before the shooting; after the shooting went down to see her at the city prison on Friday or Saturday evening at the request of Dr. Lyford. Saw her twice after that, once in conjunction with Dr. Lyford, and once alone. Did not see her again until the case was put in my charge by Dr. Lyford. I think on the thirtieth of December.

April 4.

John B. Trask (recalled): Have been her attending physician from that time. She has been confined during that time in the county jail. The periods of my visits have been irregular. Commonly once a day, but it will average much more, however. When I first saw her the evening of the 30th December I found her in a considerably excited condition. Did not make any examination of her that night. Next day her mental condition was considerably disturbed and she was incoherent in her language. I found she was in a bad condition in regard to her menstrual period. I found the following day that there was scarcely any difference in the pupils of her eyes—neither pupil was dilated to the extent of one quarter of an inch—not a sixth of what it should be. It was about the size of a small pin's head. The day following she was in considerable excitement and the pupils were scarcely discernible. The general condition of her system is very bad indeed; diseases of the uterus and the nervous compli-

cations resulting from that; cannot say how long it has been affected; think it would extend to three years back. Those diseases of women operate very seriously on the physique of those individuals who are suffering from them. When long continued they produce disturbances of the circulation and of the nervous system which entail many other sequent or subsequent diseases or maladies. Those people are always more or less anemic, the blood is in a very poor condition and they are in a poor condition in consequence of a lack of nutrition which necessarily flows through that source. This organic disease in this case of Mrs. Fair has affected her regular menstrual periods. Since she has been under my attendance she has had five in three months; the usual period in a healthy person is about twenty-eight days; they generally call it a month. The usual period of the continuance of menstruation in a healthy person is four to five days. She gave marked evidences of the approach even of these terms, by mental disturbances, a high degree of nervous excitement. She would speak rationally and irrationally also from the same premises and in the same paragraph even. And there was loss of memory; she talked loud and violently as though there was something immense at stake or as though she was extremely angry. I would frequently have to stop her from talking. I wish you to understand me distinctly on one point relating to the matter and it is this: That I denominate this case a case of hysteria mania and that

in all cases of hysteria the mind is never free from disturbance no matter what the form may be, from the mildest to the most intense. Melancholy generally follows afterwards. Very few have any memory of the past. Take a healthy woman and place her in those circumstances and the chances are that at the end of the month they will recover, perhaps almost entirely, but you take a condition, a low condition of the system, as we demoninate it, where a woman is in general bad health, and it is very doubtful to me if hysteria or its effects ever leave until after the turn of life; and even not then. Commonly about that time if they go on to that period in their ordinary condition, you will very likely see some evidence of insanity, or some other malady spring up of a sexual character, which will generally shock everybody acquainted with the parties; as, for instance, a woman being attacked with nymphomania at that time, following as a result of hysteria long continued—a woman who has been perfectly chaste, in every respect, becoming a public prostitute all at once. It is the most difficult thing to say how any form of sexual malady of that kind in a female is going to terminate, and it is difficult to say how it is going to operate in a given case because there are no two cases of it alike.

Supposing a person has committed an act of violence under a recent impulse, or that at the time the reason was really dethroned, and upon recovery from the attack, and the reason being restored, that party has no

memory or recollection at all of it. It is almost universally the case in hysteria, in those violent turns. They have no memory of what has transpired.

These sexual diseases of women are very frequent of occurrence. They are among the more common maladies which we have to treat; unless it burst into some crime or something of the kind they are usually concealed from the public. Mrs. Fair had a good many delusions, like her malady—periodic—although some may have been persistent with her. She has had an idea that attempts have been made to poison her and they were unremitted. She will not eat food of the prison. Her food for a long time past has been brought in to her from the outside; she will not even drink the water from the prison; her water is brought from the outside by her mother. She has no confidence whatever in the world at large—in mankind or in womankind; she is doubtful of everybody and everything almost; she has no confidence in anything, even to discharging you as her attorney and hiring others.

She has generally complained of sleeplessness. My opinion is that she has not slept more than two, not two, whole nights in three months; has not slept more than one hour in the twenty-four for that period of time; so much so that it might be taken as a case of insomnia. She could not live that length of time without sleep, it would probably be absolutely impossible, but it might be put down as a case of insomnia—sleeplessness. The usual result of in-

somnia is extreme disturbance of the brain. Visited Mrs. Fair twice in the city prison. At the time I thought she was malingering. I did not pay particular attention in examining or making any close examination; I thought she was feigning. Thought her acts at that time were overdoing the matter which I have seen in some people. This is the general rule of course which malingerers pursue. I so expressed myself on more than one occasion. I went there with all my predelictions against her in that matter. I think it was one of those extremely violent forms of hysterical mania at that time when I saw her in the city prison, that I have seen in private practice, but at the same time I was suspicious then that it might be simply feigned for effect. I changed my opinion very much in regard to that woman since she came under my hands for treatment. There is one thing she cannot feign, her eyes; this extreme contraction of the eye a medical man regards as nothing more or less than a protection thrown out against any affection of the brain that can be produced by light transmitted through the optic nerve. Her appetite has been variable; at no time was her appetite very voracious. At one time her appetite was evidently very voracious, she required a large amount of food taken to her. That is difficult to account for. It is one of those conditions that often ensue in those conditions of the brain producing anything like partial insanity or even some insanity and it generally arises from the want of

a sense of satiety—sensibility to the fact that the person has plenty. That is the only way it can be accounted for. One thing is certain she never showed the effect of food physically.

Heard the testimony of Dr. Letterman; as a medical man the condition in which he found Mr. Crittenden at the post-mortem, taking Judge Cope's evidence as to his condition before his death, with some fifteen inches of the smaller intestines mortified, indications of inflammation in the surrounding intestines, my medical opinion is that gunshot wound was not the immediate cause of his death, though either condition would have killed; nobody can say which. The gunshot would have killed certainly, so would the other; the two combined would be very certain to. I heard Dr. Sawyer's evidence. Taking all the evidence of Dr. Letterman in regard to the appearances of the post-mortem, my opinion is the inflammation or mortification of the smaller intestines was not produced by or a consequence of the gunshot wound. I understood Dr. Letterman to say there were no clots found in the vessels; had there been any clots found there that might perhaps have accounted for the mortification. From all the circumstances I can learn relating to it I believe that inflammation existed there prior to his receiving that gunshot wound. How long inflammation has been setting in these smaller intestines before mortification set in would depend altogether upon how acute it was, whether it

would be manifested upon the individual or not. A man might have what we call a grumbling belly-ache, week on and week off and not expect that there was anything serious, and at the same time there might be a serious malady existing.

Cross-examined: At first I made scarcely any examination to ascertain the condition of her mind; I did not consider her my patient at all. I speak only as to trouble of the uterus; I made no examination for the purpose of ascertaining what that trouble was. Do not know and have no idea at the present time what the disease of the uterus is under which she is laboring further than the statement of the physician who was on the stand yesterday. During those menstrual periods she was pretty violent sometimes. Her symptoms might be produced by a person indulging in violent passions and committing a serious crime under the influence of those passions; such symptoms very easily follow the commission of a crime, where a person of violent passions had committed a very atrocious crime. At the time I thought she was feigning. I could easily account for a high degree of nervous excitement under such circumstances, in a person who might be in a perfectly sane state of mind. I do not think the woman was conscious at the time, of what she was doing.

Her consciousness was entirely gone. Her language was very incoherent at times. Half the time I could not tell what the woman did mean or what she was talking about. She was speaking without any apparent reason, railing on this one and on that one. She would speak of her child and Mr. Crittenden and her attorneys and the physicians and the world at large and everything else, all jumbled up together, so as to give any specification, I cannot do it.

In the first place I made no examination for this reason; that I did not expect to be in attendance upon that woman for this length of time. I merely took the position to relieve Dr. Lyford while he was to go on a short journey, and I did not wish to meddle with the case, and I intended to merely take care of it or to keep her along until he came back. Heard Dr. Lyford speak of her condition when he was first called. She had an attack of the gout, retrocedent, changing its position from one part of the body to another. That is a term used for simple metastasis. Generally where a malady of that kind or rheumatism, rheumatic gout or either rheumatism or gout, either sort of malady may begin in a man's big toe and then go from that, perhaps and attack his stomach, his intestines, his brain or any other part of the system.

Laura D. Fair: Am thirty-three. I resided on 3d November last at Mrs. Marillier's. Made the acquaintance of the deceased in 1863 in September at Virginia City. It was about a year before I ascertained that he had a wife. For the last three years my health has been getting worse all the time. First had any interference or difficulty with menses about a year ago. As a general thing for the last eight or ten months after recovering from these periods, the

time prior has been a blank. I was unable to sleep at all some nights and other nights not before three or four in the morning unless I took valerian or chloral. For the four weeks prior to 3d November saw Mr. Crittenden every day, sometimes twice and three times in my rooms in October and November. But in August and September generally took dinner at Marchand's and at Guntz'. Sometimes we had our meals sent to us from Guntz'; breakfast generally, in October, in my room or opposite in a little German restaurant. On evening 2d November Mr. Crittenden dined with me at Guntz'. Saw Mr. Crittenden the last time the day of the 3d at Mrs. Marillier's about half-past four. In 1864 first ascertained that he was a married man. Some one mentioned the fact in my presence. I asked him if he was divorced, he said he was not but he expected to be within six months and he went on to tell me his life with her then. Prior to learning this fact I was engaged to be married to him. After I asked him if he had a wife he said he had hoped to keep it from me until he was divorced and begged me not to give him up and to wait. I was very miserable. I told him it was placing me in a very bad position in regard to the world and he said it would be an evidence of my love if I would bear it and wait, which after a while I consented to do. When I first made his acquaintance I had just taken the Tahoe House in Virginia City, a large lodging-house. Kept it till November, 1864. In September 1863 I took the house and Mr. Crittenden took a suite of rooms opposite mine on the first floor. There were stores underneath; only had the upper portion of the house. I think it was the end of 1864 that he first left. We came down together to San Francisco to the Occidental Hotel. Our rooms were adjoining. I only remained there two or three days, I became sick, returned to Virginia City. At the house where I was he had his same rooms. My mother told him he had to leave the house and not come near me until he was divorced if he intended to be divorced. He told her he intended to leave the house but intended to take me with him, that I had sworn I would stand by him through the difficulty and that she nor no one else on earth should part us until I said the word. Within six months he said he intended to be divorced. We then moved up to a house I owned on "A" street. Mr. Crittenden took rooms there. The Tahoe House I gave to mother. My little girl I took with me. I resided there until he came to San Francisco in October, 1866. I soon followed; first went to the Russ House, afterwards he procured a furnished house on Laurel Place and I moved there. I lived there till January or February, 1867. Saw Mr. Crittenden while there every evening and sometimes during the day. I gave him the money to pay the rent. I owned the house still in Virginia City. I had some money and some stock. When I left Laurel Place I went to Mrs. Hammersmith's, Kearney street. He still had his rooms in Pine street but he was at Mrs. Hammersmith's every evening. One of the rooms was taken for him. July, 1867 I went East for the first time. He was to have gone East with me in July, to Indiana to

procure a divorce, but he had failed in his stock operations and was unable to go on that account; he concluded that he would follow me to the East just as soon as he could arrange his business, expecting to make considerable money that summer. He did not come on East. I determined to go to Havana and give him up if I could possibly forget him; I wrote to him to that effect. Miss Bowie went with me, an acquaintance made while traveling. In New York received letters from Mr. Crittenden by every steamer; there was no overland, no cars then. In Havana I was sick most of the time; do not know that I wrote from Havana. I telegraphed him from there. After returning from Havana to New York I came directly to him to San Francisco. I arrived the 2d of June, 1868, My expenses during my absence I paid out of my own money. Mr. Crittenden had secured rooms at Mrs. Hammersmith's; he had them ready for me when I came. After my return up to September 1868 he always came every night and sometimes during the daytime; every moment he could spare from his business he was with me. Mr. Crittenden met me at the steamer and told me I should never regret having returned to him; that very shortly he would be able to keep his promise of going to Indiana and for me to just trust him and have faith in him. I then told him of meeting in Havana, Mr. Sauers, the only gentleman I had ever seen since I made Mr. Crittenden's acquaintance that I could thoroughly respect and I had thought if Mr. Crittenden was entirely lost to me, and I knew that it was inevitable that I must give him up, I could perhaps make a future with Mr. Sauers and perhaps be comparatively happy with my child. I told Mr. Sauers when I left Havana that I would return in two months if my business was settled to suit me in San Francisco. I stated the case fully to Mr. Crittenden and begged him if he did not intend to get a divorce, and know that he could accomplish it, to let me go and marry this man for the sake of my little child. That probably I never would meet one again that I could love or could respect as nearly as I had him, Mr. Crittenden. Showed him Mr. Sauers' letters to me to prove to him the engagement. He told me that I could not marry him; that if it was ten years after I married him he would take me from the man; that he would shoot him if necessary, that he would kill any one who came between us; that he loved me and intended to make me his wife, and it should be all settled and all should be made right; that I was the only woman he had ever loved in all his life; that he felt that God had intended me to be his wife, and that I was virtually his wife then, in the sight of God, and he begged for me to bear with this thing a while. Mr. Sauers was a commission merchant in Havana; he is a Virginian; Mr. Crittenden persuaded me to go East and leave him here and he would follow which he did afterward. I left in September, 1868. He did not come according to the time he said but he wrote sufficient to explain to me why. He accompanied me to New York, West Point and White Sulphur Springs, Virginia. He then started for California

again; said if I remained at White Sulphur Springs he would return within a month. He did not come so I went back the latter part of September, 1869. My mother took a house on Bush street; I lived there until February, 1870, when I moved to Sutter street. When I returned here I took him by surprise; he told me had I waited two weeks longer he would have been there; that his son Parker had run him into debt \$7000, which he had to pay. In July, 1870 we were to go East; he told me it would be very hot in the East and to have my clothes ready for the marriage because he did not wish to stop in any place long enough to wait for clothes—that he could arrange the divorce without living in Indiana. He said all the lawyers understood how to do that and it would not require a residence there. I had my clothes made, which clothes I never have worn. The price was six or seven hundred dollars. When the appointed time came he had a speculation in gasoline that failed and he wanted me to wait longer again. I then told him I was going with my mother; that I had lived alone, separate from my family as long as I intended to, but I would wait. I never expected to love any man but him and I was willing to wait as long as I lived. He told me his family was East, never to come back. I knew he was living in the same house with his wife. I gave my consent to that on account of his friends. He said they had him in their power and they were opposed to this divorce and that they would ruin him in his business.

Down to the third day of September I loved him better than I did my life, and I love him yet better than I do my life. The last moment I saw him alive my feelings were the deepest love and the most unbounded faith; according to his promise he loved me the same way. He promised me that afternoon to return to me that night after going home and taking dinner with his family. I had full faith in his promise. He had taken a room there he said to satisfy my mind that he did not live with his wife; he told me that before going that I was the only wife he had, for he never loved his wife before he married her; that she had not loved him or he her and if he had ever committed adultery it was with her. He thought that morning I was unhappy about his going on the boat to meet her. He said, "You know why I go; I go for the sake simply of the feelings of my children, but if you have any objection to my going I will not go." He drew me down on the sofa and wished to kiss me and I would not let him; I told him in a few moments afterwards he would kiss her. He said, "I am sorry to see you doubt me that much; have I not assured you that you are my only wife and I kiss no other?" Then I let him kiss me. He said, "Will I go over to dinner with you to your place?" I said, "no" that he might walk down stairs with me. He did so and he started down the street and I started over opposite to the little restaurant. I only stepped inside the door. I wished him to think that I went there to dinner. He had asked me if I was going to the boat, and I told him, no, which was a story. I was going but I did not wish

him to know. I knew that he was coming back but I wanted to see how he met her and without his seeing me. I crossed back to my rooms and waited there till the carriage came and I went to the boat. I saw him there as I went on the boat. As soon as the Oakland passengers left I went round so as to see him. I saw him in the crowd going towards Oakland on the wharf. That astonished me and after that for some time I remember nothing. The first thing I remember after that was Mrs. Crittenden's voice; she has got a peculiar voice and it was disagreeable, the sound of it. I looked to see where it came from or what it was and I know I put my hand on something that was cold and wet. I saw her and him together; I thought to myself, "I never put my gloves on yet for now my hand is wet." I can remember nothing else after that except a confused idea as if there was a big crowd and somebody speaking up in the crowd like a church and a minister. I know the person was up above the crowd but I did not see the people's bodies. I do not remember how I got off the boat nor what they did with me. I have no remembrance after that for a long time. I know I was in the prison when I first remember anything. I always carried Mr. Crittenden's derringer, he told me never to go without when I was alone and he left me his as he had two. When I took the pistol to go to the boat I had no idea of using it. He was the only friend I had in the world. I would not have harmed him and if he had been living now when Mr. Campbell insulted me the other day, he would have made Mr. Campbell on his bended knees apologize for it.

THE COURT: Silence! The officers will bring the parties forward immediately that applauded. Bring them forward at once and have them sworn.

An Officer: (After a search)) We cannot find anybody who applauded.

THE COURT: Bring them all forward and have them sworn.

Mrs. Fair: Judge, it was my fault, probably.

THE COURT: Of course you are not to blame for the disturbance.

Mrs. Fair: Well, Judge, human nature could not stand it.

Francis M. Hughes: (brought forward and sworn)

THE COURT: Did you applaud? No, sir. Did you see any one applaud? No, sir.

Emily Pitt Stevens: (rising) Judge, I was not aware that I could not applaud in Court.

THE COURT: Did you applaud? I said "Good" and I put my hand down on the desk, so. Did you make any noise? I made no noise with my feet; with my hand I did.

THE COURT: You are fined \$25.

Mrs. Fair: I will pay it.

Mrs. Booth: (rising) Judge I was not aware that I could not applaud.

THE COURT: Did you applaud? I stamped my foot, I was not aware that it was against the rules.

THE COURT: Enter a fine of \$25.

Mrs. Fair: I will pay it.

Mrs. Booth: Thank you.

THE COURT: You will have to draw heavily on your bank if you pay the fines of all of them.

Mrs. Fair: I do not think, your Honor, these ladies understood the rules of the Court.

THE COURT: Well, they will understand them now. I wish the officers now to keep a careful lookout and arrest any person guilty of applauding on either side.

Mrs. Fair: I got that five-shooter when I was at those rooms on Bush street. I had the floor above the street and I was compelled to leave the door open on account of workmen passing up and down. There was a parcel of boys there from ten to twenty; they would come in and sit on the stairs and were very impudent. I spoke to them frequently and I got saucy answers from them. They would say they had a right there and would stay there and answer me like that. I had no weapon except the little derringer and I was afraid of a big crowd of boys, and thought if they attempted to come in and do any crime if I shot at them I might miss and then I would be at their mercy myself as I had but one shot, so I went to this place on Kearny street and asked for this pistol and bought this revolver that has been spoken of. I stated to the man how it was and he said I was right in getting it and said he, "The same boys broke into my establishment last night." Then I took this six-shooter and exchanged with the man; that is the way I obtained the pistol I had on the 3d.

After I married Mr. Snyder I was walking on California street and Mr. Crittenden passed me. He said, "I wish to speak to you; I must see you at whatever cost." That night I received a note from him wishing to see me. I went to his rooms at Mrs. Hammersmiths', the old room that I used to have. He took hold of my hand and said, "Oh, my God, why have you done this thing? Why have you put this barrier between us?" "I married him," I said, "in desperation to try to put something between us." I thought I could forget him and if I went away I could have a home for myself and child and a protector and may-be learn to love him. I was almost crazy. I don't think I remember much that I did do about the marriage. I know I was almost desperate. My mother kept before me night and day the idea that I was utterly ruined and that it would be better for me to marry Mr. Snyder and the world would think that I parted with Mr. Crittenden of my own accord. Mr. Crittenden when he was angry with me one night had jumped up and said, "Well, I don't care, I have sent for my wife." He sent a lady to me to tell me that it was not so, that it was only said because he was angry. The lady told me that she was taken sick and could not see me on Saturday to tell me, and on Sunday I was married. Thinking that he had treated me badly I had married Mr. Snyder in desperation then and when the woman

told me he had sent word to me that he had only said it in anger and that she had not delivered that word, that I had nothing to sustain me against the love I had for him; and he begged so hard, he said he could not live without me, that it was death the way he was living then. I told him I did not see how it could be helped; he said it was a matter simply now of two divorces, if I would still accompany him he could procure the divorce for me just as easy as he could for himself inside of three months. He asked me if I loved Mr. Snyder and I told him I did not. He asked me if I still loved him, I told him I did love him better than anything in the world. He made me swear that I would go directly home and never allow Mr. Snyder near my room again, but that I would take separate rooms. I agreed to tell Mr. Snyder that I would not live with him any more and to make him take separate rooms. Did not see Mr. Snyder, but my mother explained to him and he remained away from me; think sat up in the parlor all night long. I had a couple of bedrooms. I took one and left the other for him. The next day I told him I could no longer live with him, told him that I had made this great mistake, that I did not love him and could not love him and never had and begged of him to go away and leave me. I did not mention Mr. Crittenden's name. An arrangement was made that he should remain in the house till he went to Lima. The next time I saw Mr. Crittenden he said he hoped Mr. Snyder would go to Lima before he and I left, but he said he could not stay away from me even if he did run the risk of his life from Mr. Snyder. Later Mr. Snyder took his things and left. Mr. Crittenden was satisfied and suggested having Mr. Snyder followed as he understood that he was very wild and in that way I might get evidence upon which I could get a divorce here before I went to Indiana and not have to wait. He said I was to get McDougall, a detective to follow Mr. Snyder. Afterwards McDougall told me that there was to be a meeting between a woman and Mr. Snyder and he wished me to be there and Mr. Crittenden said I would have to go because McDougall and the policeman had no right when they knocked to push open the door and go into the room; that Mr. Snyder would have a right to kill him, but that I could knock and when the door was opened I could push it open and they could go in. I got two gentlemen to go with me because I did not like to go alone with the detectives. Mr. Crittenden told me then to put the case in the hands of a lawyer. I chose Mr. Nourse who did get the divorce for me.

Yes, Mr. Volberg in his store told me about furnishing Mr. Crittenden's house for the return of the family. He was laughing at the time he was telling me. He told me all about the curtains, that they were to be silk tapestry and there were to be velvet carpets and so on and I thought he just did it to aggravate and annoy me and it did annoy me very much. I told him that Mr. Crittenden had told me positively she was never to come back and I did not believe she was coming back. Mr. Volberg has said that I made

threats; I do not remember saying what he has stated though I may have done so because I was very much aggravated. He aggravated me very much and said that everything he had told me was true. I did not believe that Mrs. Crittenden was to return because Mr. Crittenden had told me all the time that she was never to return. Had no idea then of ever shooting either him or Mrs. Crittenden. It is wonderful that I did not kill myself long ago, but to kill him—I never thought of it. My daughter will be eleven next August.

April 4.

That evening in 1869 before I went to his house, Mr. Crittenden had been with me where I resided on Bush street. He threw himself on the lounge and said he, "I am so fatigued that if I get down here I shall not get up and shall probably stay all night." I drew a stool up to his head and sat down and told him I was in a good deal of distress of mind, for he had told me not to unpack my things at all and the time had transpired when he had said he would be ready to go, and more; that I was willing if he had changed his mind to give him up and I would not trouble him but I would go away myself—but I wanted a decided answer that night, once for all. He said he did not feel well and did not wish to talk upon the subject. He said, "I will not speak upon that subject tonight." I found that I was getting very much excited and I left him and went into my bedroom to get a powder. While I was in there I heard the door slam and found that he had gone; I threw on a cloak and without my hat started after him. When I got on the street I saw him in advance not going in the direction of his rooms as he had told me, but up Bush street towards Dupont. My idea was not to part with him angrily if he was angry at what I had said to him. He went in a house on Ellis street and closed the door. As I got up onto the balcony his son Howard stepped on the balcony. I told him to ask his father to just step down to the door and speak to me for a moment. I asked what house it was and he said his family lived there. Howard went in and called and his father came to the head of the stairs and said, "I will not speak with Mrs. Fair tonight." Howard asked me to step into the hall and I asked Mr. Crittenden to say a few words to me and he said he would see me another time. I told him how distressed I was and that I wanted an end to it and it was easy for him to say "yes" or "no" to my question just where he stood. Mr. C. came down a portion of the stairway and said, "I am disgusted with you women, you have unsexed yourselves." I heard nothing further afterwards. He came clear down stairs to where I stood and said, "I will see you tomorrow, you are excited now and so am I." I said, "Very well." In the meantime Howard said Parker had gone for a policeman and I said to Howard, "I have done nothing to be arrested for and if you do that, if you cast such an indignity upon me as that, you shall regret it." Mr. C. came down and I asked him if he would walk a few blocks with me and let me explain,

because I thought he was offended. He said he was not offended and would not go but he would see me the next day. He told Howard to see me home and so Howard started home with me and we met Parker coming with two policemen. Then Howard said Parker would see me home, which Parker did.

While at White Sulphur Springs in Virginia the last time, Mr. C. brought Howard with him; he left when his father did, in about a week. I was acquainted with James, Howard and Mrs. Crittenden and Carrie.

Cross-examined: Was born in Holly Springs, Miss. We lived in different portions of the South; we went to Texas, that is the first distinct remembrance I have of my young days. I was married in New Orleans when about sixteen to a gentleman by the name of Stone. He died in one year. Was next married in 1855 to Mr. Thomas J. Grayson of New Orleans. I last heard of him in 1869 when I was in New Orleans; he is still living as far as I know. I was married to Colonel Fair in 1859 in Shasta in this State. Lived with Mr. Grayson over six months. We came to San Francisco in 1856 or 1857. I remained here within a month of my marriage to Colonel Fair. Lived first at the Rasette House then my mother took a house on Clay street. We moved to Powell street afterwards and I taught music. We quit keeping house. Cannot remember all the different places I lived at. We took rooms at Reese's Building, my mother, myself and my brother. Then we moved to a house on Montgomery street and from there we went to Shasta and I was married to Colonel Fair in Shasta. Continued to live with him up to the time of his death. After his death we moved in that winter on Mission street; my mother had it as a lodging house till 1862 when we moved to Sacramento and kept a boarding and lodging house. I remained in Sacramento until I went to Virginia City in 1863.

I took the Tahoe House on the first of September. Made the acquaintance of Mr. Crittenden immediately after I moved in—he was almost one of the first roomers. He was not then residing in Virginia City; he had been there for some time. He never left afterwards that I know of except on a visit to San Francisco. Had never seen Mr. Crittenden before I saw him in Virginia City. I lived in Yreka all the time after my marriage with Mr. Fair until about two months before Mr. Fair's death. Had made the acquaintance of Howard C.; discovered that Mr. C. was a married man; supposed he was a widower. He courted me, went with me and engaged himself to me as a single man, and how could I think then that he was a married man? I never asked him the question. Our courtship commenced two or three months after I knew him; our engagement took place just as soon as he courted me. I did not tell anyone of my engagement except my mother. All my acquaintances I made after I went there; I had no acquaintance intimate enough to tell them. The first injunctions of secrecy were when I first heard his wife was living. At the Tahoe House I do not think there was ever a room vacant. There

were thirty-seven rooms; I paid five hundred dollars a month. There were a number of Mr. Crittenden's friends who lived there. During this period he took me everywhere, to theaters and every place I went he took me. I first made the discovery that he was a married man in the year 1864. I remained at the house on A street until 1866 when I removed to San Francisco. I went to the Russ House in San Francisco when I moved down. I cannot remember exactly how long I remained there. Mr. Crittenden made Mr. Pearson angry and I had some trouble about it. A man Searles said something and Mr. C. brought him into the room and asked him if he said it and he said he did not and he made him write it and take it back and apologize and then I had some words with Mr. Pearson about it, then I left the house. I first saw Mrs. Crittenden at the Occidental Hotel when I came down with him on this visit I spoke of. Had never prior to that seen her in Virginia City.

I remained in San Francisco on that occasion only a few days. I came to be with him and to remain until he went back. He said he wished to ask a sacrifice of me, that the world had been talking, that he did not wish his friends or family to know the relations between us, and that by my going there where she was, persons would disbelieve anything that might be said, and that if she believed anything about his loving me or my loving him she would make a very great disturbance; that he was not in a position then to stand it or to defy her or his friends in whose debt he was and he asked me to bear it for him. I told him it placed me badly; it would be all my sacrifice because they would blame me and there would be no excuse for me; he said it would be an evidence of my love for him and it would all be right when I was his wife; that he would show the world the respect he had for me and the position I should occupy to him. I consented to do it and I went there, but I could not stand it; it made me sick and I returned to Virginia. He told me he went to the table with his family for the sake of friends of his and his wife understood perfectly that he was not going to live with her, but he had never openly parted from her. I did not know of other members of Mr. C.'s family going to Virginia City to live during the time I was keeping the Tahoe House. Knew Mrs. Sanchez; I heard of Mrs. Van Wyck being very ill in Virginia and losing a child there.

Beside those of lodging-house keeper and teacher of music I have never persued any other business. Was in debt; Mr. Buchanan, the actor, came to visit some friends in the house and he found me in tears; he said he thought he could help me if I did not mind learning a play just to make the money; that he would assist me in getting out of debt. I studied the play and I played it, but I never looked into a theatre in that way before or looked into a play book before. I simply did it for the sake of getting out of debt. I had sold and pawned all the jewelry I had; I owed a hundred dollars and there were the expenses of the house, which was almost vacant, and of course I was running into debt, because

the Legislature had adjourned, and there was no one to come into the house—and Mr. Buchanan kindly offered to get me a theatre, and assisted me to do this. He said it did not necessitate that I should be an actress, or that it should be a success; but that the house would be crowded, just from curiosity, and I could make money; and I did. Afterward, he wrote down to the Metropolitan, I asked them to give me a house here, in order that I might make money; and I did make money that way, and I played a night or two, and that is all I ever did. This got me out of debt and enough money to support my family and myself until I got the Tahoe House arranged, with the sale of jewelry that I had. I also pawned a diamond ring. I came from Virginia to San Francisco to live; cannot be sure of the month; do not think I left it till I went East in 1867. I got back here 2d day of January, 1868. Next went East in September, 1868. I remained till September, 1869. I made the acquaintance of Mr. Snyder the last of August in 1870. I knew him about a week before I was married to him.

On the 3d November first saw Mr. Crittenden after breakfast, next after four o'clock; he said he came to see me for a few minutes and then he was going from me to the boat. I first heard of his family returning from Mrs. Hammersmith; then Mr. Volburg spoke of it. I believed what Mr. Volburg said, that he had furnished the house and all that, but from what Mr. C. said I did not believe she was coming; if she did come I believed she came against his wishes. When I heard these things from Mr. Volburg I told Mr. C. of it immediately. He said that Mr. and Mrs. Sanchez were living in the house and he was furnishing it; and he had written to her to go to Kentucky, and if he could not prevent it, it would be but a short time before we would leave. While I lived with Snyder I was Mr. Crittenden's wife. God married me to him when we were both born; God made me for him and he for me. My standing up before Dr. Scott did not make me Mr. Snyder's wife; that was adultery when I married Mr. Snyder. I believe there is but one person born for another in this world, because I felt so differently toward Mr. Crittenden than I did toward any other human being on earth. I do not believe God put such feelings for a man into a woman's heart, if that man is not intended for her husband. I would have been willing to have died for him anytime. I do not repudiate the ordinary institution of marriage, but I simply say, in the sight of God, standing up before a minister does not always make us married. If we go there with no love it is not a marriage—in the sight of God. I was Mr. Crittenden's wife because my very life was bound in his, and his in me. He often said that I was his only wife—the only woman he had ever loved.

I considered myself his wife then and I consider myself such now. He considered me so; he told me the last time I saw him that I was the only wife he had and he kissed no other. After Mr. Crittenden left on the morning of the shooting I suppose I went to breakfast though I have no recollection where I went that day; I

do not know; remember that I was on the street once or twice; I remember several things I did that week but I cannot tell you the days I did them. Do not remember whether I visited any store on that day. I wore a black silk dress because it was the dress I had on in the prison. I wore a black hat; had a veil with me, I tied it around my ears before I went on the boat in the carriage; I do not think I had it over my face. I tied my head to cover my head and face; I did not desire Mr. C. to know me. I cannot remember at what places I was that day. Know a store called the "City of Paris"; if I was in it 3d November, I do not remember it. I know Mr. Maurice Dore's office; do not think I went there at all, if I did I have no recollection of it. I do not remember going and calling anywhere on that day; I remember things I did but I could not say it was that day; remember I was very tired that night.

My purpose in going on the boat was to witness the meeting, to see if he had told me a story. I suppose I had a pistol, I always carried it in my pocket; I never thought to take it out but generally left it in the pocket of my dress. If I was going to be out after dark or even late in the evening I would take it or I may have had it in the day-time; if it happened to be in my pocket, I would let it say there.

I heard her voice and I turned and that seems dim to me but of course it was on the boat. It seemed like that all the air was filled with her voice just then; I did not hear anything else and I turned to look at her. I knew the voice in a minute. Do not remember whether they were sitting or standing. Remember putting my hand out against a glass. I did not hear anything but her voice all the time; that seemed to be ringing in my ears. I do not remember what she said. I just heard a clang, clang; it seemed very loud to my ears. Well, she has got a peculiar voice. I do not remember what she said.

I had never used a pistol on any previous occasion. I never fired a pistol; I never fired a pistol at Mr. Crittenden. I fired a pistol down the stairs and Mr. Crittenden stood in the hall; I did not see him at all when I fired. I fired simply to threaten him because he had come three times that night after he had insulted me and the indignity put upon me about a policeman. He swore he would see me if he had to break the door down. That was a few nights after I followed him home, that night when his son Parker got the policeman.

I never at any time endeavored to persuade him to continue the relations between us. I begged him to either give me up or get a divorce and not keep me waiting in suspense; that was the misery of my life. When I went to Havana I determined to give him up entirely and I immediately dashed some of the correspondence into the fire, but I had left some of the others in a warehouse with some things of mine, otherwise I would not have any letters today. Miss Bowie was with me when I did it and she caught my hands and begged of me not to it; that was just before I left for Havana.

Mr. Campbell: Have you had at other times other deadly weapons

besides pistols? No, sir, only a pistol. You never had a knife? Not that I can remember; if I have it must have been a toy. Were you ever arrested for using a knife upon anybody? No, sir. Do you recollect when Judge Cowles was Police Judge here? Now I know what you are driving at. When I had the Tahoe House, underneath was a toy store. They had no right to my portion of the house at all and on Christmas day this man had put up a large tree. He had already put a large toy flag on top of my house which made my house look like a toy house, then at Christmas he put a large tree full of dolls and fearful faces and flags and everything that a toy store would have and put it up on my front balcony. I went out and said, "Mr. Dale, who told you to put this there?" He said he did not have any permission but he intended to put it there and he gave me some impudence. I told him he had no right to that part of the house at all, his store being underneath. My brother cut it down and there being flags on it made the community think that because I was a Southern woman I had cut it down because of the flag. I stepped to the front of the porch when the crowd collected and told the crowd that I had no objection to the flag there, although I was a Southern woman, and any gentleman might come and put a flag on the house if he saw fit, but not that man to put his toys and things upon my premises against my permission. It made him angry. And then on the Fourth of July to annoy me he attempts the same thing again. I told the clerk to go and cut the rope, but he did not do it and I took a pocket-knife and cut it and in cutting it I cut his hand a little and he had me arrested; but the jury found him guilty of malicious prosecution and fined him seventy-five dollars.

Mr. Campbell: I asked you whether you were arrested here before Judge Cowles, Police Judge, for using a deadly weapon on any person? I do not remember having been arrested here for anything like that; indeed I never had a deadly weapon ever in my life before. Nine years ago there was something about a man who was trying to force his way into the hall-way when I tried to shut the door and I had some scissors in my hand and I threw my hand out to prevent his coming in and the scissors struck his coat and then he went and slit a great long place in his coat and went into court and said I cut it. The man was a wood and coal man. I never intentionally struck at him, I tried to push him away from the door, that it all. It was a few months after Mr. Fair's death and he left me without a dollar and I begged the coal man to wait for a month and then I would pay him when the roomers paid their rent, and he tried to force his way into the house. I think I was justified in trying to defend myself.

To Mr. Cook: After I arrived in Havana, Miss Bowie who knew his father and brother, introduced me to Mr. Sauers. In 1869 he came to White Sulphur Springs. I had refused to see Mr. C. ever again until he had made some reparation for what he had done the night I was at his house. He sent me word that he would apologize; I said I would be satisfied if it was made in the presence

of those before whom he had said these things—the family that had gone for the policeman. He said he would do it and for me to send some acquaintance of mine to him to receive the apology, which I did. A gentleman went up there and he did apologize for what he had said. After that he kept writing for me to see him—kept sending me notes. Then I sent him a note that I could meet him at Mrs. Hammersmith's but did not want him to come to the house to visit me until he was divorced. Met him at Mrs. Hammersmith's and there he apologized again to me and told me of the apology and then he agreed to remain away from me until he got a divorce, if I would consent to see him sometimes at Mrs. Hammersmith's. I told him I was willing to do that. He said he could not live that way. I made it up with him entirely and forgave him. He went to Mrs. Hammersmith and she gave him a room communicating with her room. Then he sent me word that he must come to my rooms to see me just for one moment. I told Mrs. Hammersmith that I would not do it, that if he broke through the arrangement in regard to coming to the house then it would be just as it had been before in all the years past. She came back and said he insisted upon it; I told her to tell him again what my answer was; said she would not go back with no for an answer for he would kill himself if I did not do it. Mrs. Hammersmith said, let him come. I told her to tell him he could come for a few moments, and he did come for a few moments that night and it was just as I expected it would be. After that he insisted on coming all the time, and he visited me just as he did before. He would come and knock and say, "I only come for a moment, do not get angry with me now, it is only for a minute and nobody saw me; do not get angry." Finally I gradually gave up trying to prevent him, and so we became just as friendly as ever we had been.

I was married when sixteen on account of my father's request. I was but a child, I did not know anything about loving, but I married him because my father wished me to; but I was not unhappy though, particularly. He was a dissipated man and he died of something like cholera morbus. He left me quite an estate in Texas. Something over a year after Mr. Stone's death I married Mr. Grayson. Before that I went into a convent so as to be able to teach and support myself and my mother if ever need be. This property never amounted to anything of value. Lived with Mr. Grayson about six months; came to San Francisco with my mother and brother. I left Mr. Grayson because he would come home at night drunk and have to be brought in by his uncle and the cabman and his mother, and I would have to undress him when he was unable to stand. When he was in liquor he would shoot over my head in bed with a pistol and he has drawn a dirk knife on his mother when he was in a state of intoxication. He would go out and shoot the poultry in the yard, fifty at a time, one after another. He was continually drunk; he would make me lie in bed

as he leveled his pistol to shoot over my head to show what a good marksman he was.

Mr. Cook: I now offer to prove by Mrs. Fair that she was divorced from Mr. Grayson.

Mr. Campbell: I object upon these grounds: First, that a divorce cannot be proven by parol evidence; secondly, the record is the best evidence of it; third, because, of course, the opinion of the witness as to what constitutes a divorce can not be given as constituting a divorce. A divorce is a legal proceeding instituted in Court, and which is a matter of record, and which can not be matter *dehors* of record at all, in any way, form or shape. Now, it would be the easiest thing in the world, if you could prove in this way that there was a divorce, at any time to do so. The position of husband and wife would be very precarious, indeed, because it would be the easiest thing in the world to prove a divorce by some witness saying so when the fact might be precisely the reverse.

THE COURT: If you want to prove the record you must produce it or give secondary evidence of its contents upon proper showing.

Mr. Cook: It is true that where the issue comes to be material, the record must be introduced, but I do not think the rule is so where it comes up entirely collaterally to the issue which is being investigated. As a presumption of law outside of the answer I now invoke, they can prove another marriage subsequent to her marriage with Mr. Grayson, and if they do the law would presume that she was divorced, because it presumed in favor of a party having done what is right and not having violated any law. I will put it in this way: Do you believe or understand that you were divorced at the time you received the addresses of Mr. Crittenden?

Mr. Campbell: I do not propose to argue anything more than the question before the Court and that question is, whether you can prove a divorce by parol. I suppose the next thing will be we shall have a witness here to prove by parol that Mr. Crittenden was divorced in Indiana or sometime during that visit to New Orleans or New York.

THE COURT: You ask the witness to give a conclusion of law which is sometimes very difficult for lawyers. It is the reason why the law requires the record to prove it in just such cases as this.

Mr. Cook: Before you married Colonel Fair was he aware of the fact that you had been married to Mr. Grayson? Yes, sir.

Mr. Campbell: I object to that. I do not see how it is material whether Col. Fair knew it or not.

THE COURT: The motion is granted.

Mr. Cook: Did you at the time you married Col. Fair suppose you were divorced, and if so, what are your reasons for that supposition?

Mr. Campbell: I object to that.

THE COURT: I think the question is proper. The proof as you contend now, left this woman a married woman at the time she

married Col. Fair. You say, virtually by marrying Col. Fair she has committed bigamy. Now to constitute this crime there must have been an intent. If she married under the impression or having good reason to suppose, her former husband was dead or that a decree of divorce dissolving the marriage had been had, then she would not be guilty. You have left her with that imputation of having committed the crime of bigamy. She has a right to explain that.

Mr. Cook: I ask you if at the time of your marriage to Col. Fair you sincerely believed you were divorced from Mr. Grayson? Yes, sir. Do you still entertain that belief? I do, sir. Was Col. Fair, your husband, a lawyer? Yes, sir. Now I will ask you the question as to the foundation of that belief. Why did you believe so?

Mr. Campbell: I object.

THE COURT: It may be the same contingency that arises in many cases where a man has declared something in his lifetime and yet though he is not here to contradict it, you may call other witnesses who heard the conversation of declaration. I overrule the objection.

Mrs. Fair: I employed a lawyer in New Orleans and Col. Fair and he corresponded as well as myself and the lawyer, and the lawyer kept me advised of the progress of the case and sent me word by letter when the case was finally settled and the divorce was granted, and Col. Fair told me the divorce was granted.

I taught music in San Francisco from the time of my arrival here in 1856 or 1857 until down within two months of marrying Col. Fair. I went to families, I also received scholars at home. I had some that came to my house. I taught instrumental and vocal music—the piano and guitar. My money, that \$45,000, was my own earnings; not all of it was made in stocks, some of it was made in the Tahoe House. Was never idle, always engaged in some kind of business, excepting since I had this money that was made by these stocks; since I put that into bonds I have done no business. I have lived upon the interest of that.

Mr. Campbell: I propose to read the letters from her to Mr. C. as a part of the cross-examination.

“NEW ORLEANS, May 1st, 1869.

“DARLING.—I have had one of my dreadful nervous headaches so that I could not write yesterday, and now my ideas seem all confused. The writing of this letter will be a very disagreeable thing for me, as any word concerning this miserable affair, put upon paper, makes it seem the more glaring; but I suppose I must drink the cup to the very dregs. But it is right that you should know all, rather than be kept in uncertainty, now that I have sent this letter—and for your sake no suffering is unbearable. Only love me and I can endure anything; even death would lose its horrors, borne for your sake. O, darling! do you believe *she* loves you like this?

“I have taken great care not to be known as Mrs. G——n. Have never seen any of the lawyers. I sent by note a letter to Tony

G——n, stating the case and what I wished Tom to do; and if he failed to do so, that I would immediately have proper steps taken to have him arrested. The Court appointed Hunt, my former lawyer, to act for me. That is the last I have heard from the affair. Bob is gone, and there is no one I can send to see about it, and I will never go myself, though it should go unsettled. But this much I know: Tom's relations will not let the case remain so any longer. They will see that it is settled; and as it is he who made the application, he can get all arranged without my doing anything."

Mrs. Fair: There are two Graysons referred to in that letter Thomas Grayson is the one I married, Tony Grayson is his uncle. Bob is Col. Fair's nephew, Capt. Robert Mitchell.

To Mr. Campbell: I did not in the presence of Mrs. Johnson at Yreka, shoot at Col. Fair. I never knew a woman by the name of Johnson.

To Mr. Cook: I told Mr. Crittenden that all the money I had, which was the bonds, I would willingly give him and I would consider it to be a greater benefit to go with him and let her have all that than to wait till he could place her and her family in a comfortable position, and I begged him to take it and not have that as an excuse any longer. When I arrived in New Orleans I told him I had got Robert Mitchell, Col. Fair's nephew who accompanied me to New Orleans, to go to the court and look at the records of this divorce that I got from Mr. Grayson. Robert Mitchell said the divorce had been granted in 1858 and in within one year from that time there should have been the final divorce entered, but the lawyer had neglected to sign something. That is what frightened me and I thought I was ruined and everything. Mr. C. said this letter frightened him very much—this letter that I did not send till afterwards; but he said I had frightened myself for nothing. Mr. C. went down to the Court and made the lawyers do what they ought to have done years before and he said it was all right and the same as if it had been done at that time, but simply that they had neglected to sign it. I said I had taken great care not to be known as Mrs. Grayson because Mr. C. had asked me before I left here not to allow Mr. Grayson to see me at all and I did not wish him to see me or to know that Mrs. Fair was Mrs. Grayson.

To Mr. Campbell: I never knew that before my marriage to Col. Fair application was made to Judge Dangerfield, the District Judge, and that he refused to perform the marriage ceremony, for this reason, that I was then a married woman. When I said in my letter I have taken great care not to be known as Mrs. Grayson but wrote a letter to Tony G. stating the case and what I wished him to do and if he failed to do so I would immediately have Thomas arrested for bigamy, I labored under the impression that it was something dreadful; I did not know the law until Mr. Crittenden explained it to me. I first discovered the neglect of the lawyers shortly after I arrived in New Orleans—my nephew dis-

covered it, he was in the Court looking over those books. When I was getting that divorce I consulted Mr. Fair and other gentlemen. I told Col. Fair I wished him to consult the lawyers and see that it was done properly because I did not understand law. I supposed when the lawyer told me the divorce was granted that was all. Mr. Crittenden brought me all the papers afterwards; I have those papers; they are not in Court.

Mr. Campbell: I will ask you to produce those papers at the next session of the Court. I will bring all the papers I have.

Mr. Cook: Her counsel is the one to notify to produce the papers, not her.

Peter Priet: Am a waiter for Mr. Marchand; Mr. Crittenden used to dine there almost every day; sometimes he has come with Mrs. Fair. He came with Mrs. Fair there the last Sunday before the shooting, upstairs in a private room that Mr. Crittenden engaged before the dinner time.

Cross-examined: Mr. Crittenden used to go there to get his meals most every day; she did not usually accompany him but she did sometimes.

R. H. Lloyd: Am a practicing attorney here; know Mrs. Fair and Mr. Crittenden; saw them one evening in Mr. Gunsts' restaurant, two nights before the shooting.

John Miller: Am a waiter in Martin's restaurant. They were there frequently; they took dinner, lunch or breakfast, whatever you might call it.

David Friedenrich, M. R. Meyer, E. J. Buckley and Delos I. Howe corroborated the last witness.

THE COURT: Gentlemen of the jury: I have received a letter from one of your number, in which you detail the inconvenience you are subjected to, particularly on account of not being able to attend to your business. I intended that you should be allowed to communicate with your clerks and employes, in regard to your business matters only. But I have counseled with those who have been engaged in the administration of criminal justice here, more particularly, for years, and they say that it is an absolute duty, in such a case as this, to keep you together. I regret it very much; but I must add, that during the day I have myself received an anonymous letter, which of itself proves the wisdom of that course. There are, perhaps, officious persons, not connected with either the prosecution or the defense in this case, who will endeavor if they have opportunity, to improperly influence jurors. Therefore it is an absolute duty to cause you to be kept together, though every facility possible shall be given for you to communicate with your partners or employes on business matters, and I hope it will be but a few days before you will be relieved.

April 8.

Mr. Cook: Your Honor: It has been agreed between the counsel on the part of the prosecution and the defense in this case that the entire correspondence between the deceased and Mrs. Fair shall

go in evidence and be considered as read, not taking up the time of the Court and jury in reading it now.

Mr. Campbell: In order to avoid continual delay and discussion in reference to these letters and in order to avoid unfair inferences as to their contents we are perfectly willing that the whole of the correspondence should go in evidence. And so much as has been said of the relations between the parties, we are willing that the correspondence should go in evidence.

THE COURT: I am happy to announce to you, gentlemen of the jury, by the authority of counsel that they have made arrangements by which this trial will be shortened at least two days. Therefore there will be no necessity for an evening session, this evening. You will be at liberty during Sunday as, on the last Sabbath, to go to church or you may go to a theatre or elsewhere.

April 10.

Laura D. Fair: The Bank of California in Virginia City advanced me money on my note. The Bank demanded of me this money and called on me to redeem my stock. I was unable to do so; I wrote to Mr. Crittenden and told him how troubled I was about this matter and he had promised to go my security. I finally paid that note. I think it was two or three thousand dollars, I do not remember. I bought stock for all the money I had. I borrowed money and I bought always as much as the money would allow and that is how I got along. If I needed money I would call upon Mr. C. just as any man's wife would and he often called on me, borrowed money from me as well as I from him. The interest on my bonds was payable every six months and to carry them in my trunk was troublesome and so I left with Mr. C. the coupons and wrote him just how much to get each month to support me and to pay my expenses. Afterwards I had him always send me a check for so much a month. Lees & Waller made a purchase for me of those bonds the first time I went East.

To Mr. Campbell: The first note may have been for \$5000, the bank's account will show.

John B. Trask (recalled): As to the sexual maladies I know to exist in the case of Mrs. Fair, she has anteversion of the womb. This where the upper part of the womb is thrown forwards towards the bladder and in those cases lies nearly transverse. She has also what is generally denominated falling of the womb—prolapsus. There is also a degree of hardness, a very considerable degree of hardness of the mouth of the womb and of the neck—what we

call induration of the mouth and neck of the womb. Am not quite certain but I think the womb is flexed of itself. I made a personal inspection and examination of the womb of Mrs. Fair on Friday last. It compared with my previously formed opinion as to its condition, correctly. I think the conditions are decidedly chronic. Her blood has never been any other than impoverished since I have been in attendance on her. From the time the trial com-

menced down to the present moment I have been administering stimulants to her all the time and in strong, heavy doses both in Court and out. She could not have gone through this trial without it. It would have been impossible in her physical condition. While she has been on the stand undergoing examination I gave her heavier doses than I would care about taking.

Such maladies as I have spoken of are acknowledged to be fruitful causes of mental trouble by medical men throughout the world. Hysteria itself induces mental deviation, almost universally from the mildest form of mental deviation to the most intense. The most intense mania existing in its acute or chronic state—I mean the acute or chronic state of hysteria. Retarded menstruation produces an intense degree of excitement upon the brain or it might be a trifling one depending upon the condition of the patient entirely and how long those maladies have existed upon them. All irregularities of the menstrual functions when coupled with organic affections of the womb or even when the latter do not exist, become potent causes of mental disturbance. It makes no difference whether hysteria is acute or chronic, one may run into the other very easily. Conditions are, mental depression, melancholy, in chronic hysteria, by which persons are impelled frequently to commit various acts, suicidal, murderous tendencies, acts of destruction to all things animate and inanimate and various acts of that kind, that it would be a very difficult thing to give you a cat-

alog of here; it seems to be more a delirium of the intelligence and of the sensual functions than anything else. I know of no other words to put it in, plainer. They may have lucid intervals for weeks, just the same as in melancholic insanity.

So that they have apparently, a correct appreciation of everything; of all surrounding circumstances; able to transact business; but it becomes a question whether or no they are really sane at those times—a very important question—a question that all the evidence throughout the world is against them being absolutely sane, although they are apparently so. To all appearances they are. Know the defendant in these periods to exhibit a destructive tendency frequently as far as words are concerned. I heard her threaten the life of her mother on several occasions. She told me, "I can hardly restrain myself—have been hardly able to restrain myself from killing my own child at times". Have been in Court during this entire trial; heard all the evidence. Assuming the testimony which I have heard to be true and from my own knowledge of the case and the condition of her mind and system at the moment the fatal shot was fired, I do not think that the woman was in her right mind. I think the woman was unconscious at the time of the shooting.

Cross-examined: I heard her threaten to take her mother's life; have heard her do it repeatedly while in her room at the prison; twenty times within three months probably. I never considered it to be safe for that

child to be there. All I could do was to advise; I had no power to compel the absence of the child. Have applied stimulents in large quantities to defendant in the progress of this trial—ether, whisky and quinine in combination or separately, and valerian. Think I have given her as high as eight ounces of whisky a day here in this court room. Do not say that every female who becomes hysterical is insane, but that every female who becomes hysterical, no matter how light that may be, the mind never remains undisturbed.

Joseph C. Tucker: Have been a practising physician and surgeon twenty-two years. Have been in care of a private insane asylum in Alameda county; have had charge of insane patients in the state of Nevada. I think the majority of the insanity of females results from uterine diseases, a result of confinement, puerperal mania as it is called. The different forms of hysteria are first, the simple form; second, melancholy and third, mania. The mental conditions that develop themselves as a consequence of hysterical mania are acts of violence directed towards those that are nearest and best loved. They have what are called lucid intervals.

Mr. Cook: Assuming what you have heard testified to here to be true and also assuming that it is a correct record of the history of the accused previous to 3d day of November, as a medical expert, state to the Court and jury your opinion as to the condition and state of mind the accused was in at the time the fatal shot was fired.

Dr. Tucker: I should unhesitatingly say that the mind of Mrs. Fair at the time she committed the act was in a disordered condition. I do not think she was entirely unconscious of what she did. I believe she did not act from volition—she had no control over herself. As in cases of hysteria any remedy which will act suddenly upon the senses will frequently bring the patient to a state of consciousness again, to her apparent normal condition, so the report of a pistol acting upon her brain might perhaps have aroused her. I do not form that opinion or draw that conclusion from anything she said or what was said to her on board the boat, at or about the time of her arrest. The remark made by Mrs. Fair, "I do not deny it," would seem sane and lucid—remarkably so under the circumstances, but in such cases often there are momentary flashes, lucid flashes and intervals and in the incoherent mutterings and ravings sometimes of patients with hysteria they make sane remarks and insane remarks immediately after, or the reverse.

The inflammation spoken of and the mortification detailed by the medical gentlemen was sufficient in itself to produce death. The gun-shot wound caused the death, there is no doubt of that.

Mr. Campbell: Your opinion in relation to the insanity of this defendant has been based on the accuracy of the statement you have heard of the features of the case, has it not? Entirely so. If that statement should turn out to be incorrect in any

of its material parts, you would not entertain any such opinion? Of course it would be proportionately changed.

Mr. Cook: Would the trouble discovered in the intestines of Mr. Crittenden have facilitated his death by reason of the gun-

shot wound? I should think it would, if it already existed, more or less weaken him, and give him less power of resisting.

Mr. Campbell: Because a man was dying of consumption, then, he could not be killed by a gunshot wound?

Laura D. Fair: (recalled) When I moved to San Francisco I left a trunk with my mother with a lot of books, papers and letters to be sent down. She destroyed all the papers and letters and only sent the books.

To Mr. Campbell: When I went to New York before I left here I packed a box of papers and things, and in this box were some of Mr. C.'s letters and those I put in the warehouse. Those are the ones I have now. When I destroyed these letters in New York I simply gathered up the letters out of my trunk. I had received a telegram from him and I was in great trouble and I said, "I will finish this thing now and forever." Miss Bowie caught hold of me and prevented me. There were some that she prevented from being destroyed and burned, but there were a good many that were burned. It was the very day before I went to Havana.

Charles T. Deane: Am a practicing physician and surgeon; since 1863, in the army and in San Francisco. Have devoted much time to the study of female diseases. I think the lady is of a nervous, irritable disposition naturally. I have never spoken to her in my life, but judging from simply looking at her and hearing her speak I should think her mind would be naturally hysterical or that she would be subject to attacks of hysteria. Hysteria leads to mania. There was a lady this morning—I only got into the house in time to save her from wringing her child's neck—one of those cases of hysteria. Persons suffering under hysteria are apt to have an attack of it at any time whether from disappointment, grief or anything like that. I have heard the evidence here and read it as published.

Mr. Cook: Assuming these to be the facts which I have stated and which you have heard, I ask you what in your opinion was the condition of Mrs. Fair's mind at the time she fired the fatal shot, upon the question of consciousness or unconsciousness? I can only state what I did a few minutes ago, that I believe she had an attack of hysteria or hysterical mania.

Mr. Campbell: Your opinion is founded in your belief of the truth of all that has been detailed to you? That is all sir. If it should turn out that the circumstances stated by Mr. Cook were materially incorrect your opinion would be different, would it not? If it was materially so, yes, sir. Would it not be your opinion that it was deliberate murder if she killed him after all those threats and under all those circumstances? Allowing the woman to be per-

fectly sane I suppose it would. I do not know whether I have any correct knowledge of women or not, but as a medical man, from my knowledge of women I think when they are in love, and at the same time of a nervous, hysterical disposition, they are capable of doing anything. I ask you whether in order to form a judgment upon the question as to whether at the time of the shooting she was insane or not, it would be necessary for you to have a thorough knowledge of the real character of her relations? It would be necessary for me to have a thorough knowledge of her disease. I do

not care anything about her relations.

Catherine McCormick: Know Mrs. Fair, I lived with her. I cooked, sir. Knew Mr. Crittenden; frequently saw him at her house. He would be there in the morning, and then at dinner and sometimes in the evening. He took his meals there.

April 11.

Catherine McCormick (recalled): While I was living with Mrs. Fair Dr. Lyford came there regular. She was very poorly and would be for two or three days in her bed. He performed or made an examination of her.

FOR THE PROSECUTION IN REBUTTAL.

Clara C. Crittenden (recalled): My husband and myself went over the mountains to Virginia City starting from San Francisco the last of October, 1863. He left me at Aurora with my daughters and went to Virginia City. That was about the 6th or 7th November. I reached there on 4th February 1864. To the 30th June, publicly, before the world, I was on the street nearly every day. The furniture of the house we carried from San Francisco. My daughter, Mrs. Van Wyck, resided there. We resided about a block and a half from the Tahoe House.

I first met her at the Occidental Hotel in San Francisco. We occupied rooms—the floor above the parlor—a bedroom and parlor together. She had a room which opened into the same passage as mine. I was taken sick at the dinner table; I left the table and went to my

room. After dinner Mrs. Fair came into my room, where I was lying and knelt on her knees before me and took my hand and begged to be allowed to kiss it.

The defendant: That's a lie.

Mrs. Crittenden: She said to me with tears in her eyes, "Mrs. Crittenden, you are the first woman that has shown me kindness for ten years," and then she said, "there is nothing on earth that I would not do for you". I staid there until September and then my husband who was still there took me to the Cosmopolitan when that was opened and fixed my rooms for me. First knew of the intimacy between my husband and defendant when I was told of it by her at her own house in Virginia City, in January, 1865. I went there on a visit to my husband. I occupied the same room with him for ten days at her house—his bedroom. Gener-

ally my daughter spent the evening with us and if not Mrs. Fair would request permission to come in and once Mr. Crittenden said "Come in, madam, we are too old people and we would like to have your company." She would not stay late and then she would go to her own room and we would go to bed ourselves. I was always the last to retire because it took me longer than it did him, but he was always there. He never could leave my room or get out of bed and scarcely could move that I did not wake up. He never left my room for one instant from then till I got up and left him in his bed in the morning. One night Mr. Crittenden had gone into his room and she came to the door and knocked first and asked for some toddy which I handed her. Then I went into her room and she commenced telling me, and with a great many tears, and excitability, that a gentleman to whom she was engaged had been there that night and broken the engagement—a young lawyer, she said, in Virginia City, who was desperately in love with her; and she said he had broken the engagement on account of a report which was circulated about Mr. Crittenden and herself; and she said, "People will not let me have a friend in the world. The last friend I had, Mr. Crittenden, a man of family and standing—they will not allow me even to keep him; they want to take him away from me." My reply was, "Well, madam, I do not think the world can believe that, for I do not." She said, "Have you ever heard of it before?"

Said I, "I have heard something, but not that." I said, "If this thing is out, and the world is talking about you, the true way to do is for you to tell him to leave your house, and send him away from you. That is the right way to do; and for his sake, himself, as he is a man of family, and has children and grandchildren, because he has sons and daughters"—I said, "For his sake, do not let him stay here. Tell him to go away from here, and then," said I, "the thing will die out, and people will not believe it." She said that Col. Fair had ruined her good name.

In January, three years ago this past January, in San Francisco I went to her rooms in a house kept by Mrs. Hammer-smith. I then told her I had come to entreat her for the sake of my husband and his children to go away. She said that she would not go, that she cared for him and he cared for her and that unless he said the word she would not leave. I told her that whether he wanted to or not he could not say it and that it was her duty as a woman and as a mother, for the sake of her child whom she was bringing to shame and ruin and for the sake of his honor not to lead him to shame or ruin. She said she would not leave him and that I was not his wife, that I was an adulteress. She said she would not leave him. "Very well," said I, "Madam, there is one thing you may be sure of:—you may lead him to leave his family, and live with you openly, though I do not think you can—I do not think he is yet so lost to honor, and

to the love of his children, as to do that—but if you do, I assure you I will never apply for a divorce.” She had told me to sue him for a divorce, and I said, “I will never sue for a divorce, so help me God! There is nothing that you can do, nothing that you can make him do, that will ever make me do that, or that will make me bring the reproach of a divorce upon my children. I will not sue for a divorce and he dare not.”

Mr. Crittenden returned from Virginia City to San Francisco in November, 1864. He came down to see me and I was in wretched health and he then made up his mind to move down. First we lived at the Cosmopolitan. In February I took the house on Stockton street. Myself and my sons lived there and then my husband a portion of the time, when business would let him come from Virginia City where he was closing up his business. From May, 1866 he did not at any time cease to reside with me and family and he remained at home nights; a few nights he was not at home, perhaps ten, but not all night then. His clothes were always in the house and he generally came there to dress; occupied the same apartment with me the whole of the time.

Cross-examined: Am certain as to the time my husband and I went to Aurora. He was in San Francisco with me during the spring and summer of 1863. I knew he had been to visit Aurora on business, I suppose; he generally went on business wherever he went. When I left Virginia City to come to San

Francisco I left Mr. Crittenden in Virginia. When I arrived there in 1865 he had rooms in Mrs. Fair's house on A street, when I was with him. Did not stop at the Tahoe House at all on that occasion. I met Mrs. Fair at the Occidental Hotel in August, 1865. I had been in Virginia City from February to June 1865. I had not up to this time been introduced to Mrs. Fair. Mr. Crittenden corresponded with me while he was absent in Virginia almost daily. They were always affectionate letters except when I provoked him or gave him cause or he had cause to be provoked with me. They are such letters as a husband generally writes to his wife after twenty years of living together affectionately. When I went to Mrs. Hammersmith's I suspected my husband had kept up a correspondence with Mrs. Fair. Did not know it in 1864. Did not know he corresponded with Mrs. Fair while she was in the East. I never watched his correspondence. At Mrs. Hammersmith's she said that if he would tell her to leave she would do it—that she would leave him.

THE COURT: There has been an occurrence here, which it becomes the duty of the Court to notice. A gross insult has been put upon a witness, which is a contempt of Court. It is useless to consign the party guilty of that contempt to prison, because she must be consigned there at the adjournment of the Court to-night. But in order that the proceedings may be properly conducted hereafter, and no witness insulted, I impose a fine upon Mrs. Fair of

one hundred and fifty dollars, for contempt of Court. Let execution issue forthwith.

James Everard: Reside in Alameda County; am an auctioneer. On the day before the shooting Mrs. Fair called for a balance on a sale on her house in September. She took the money and thanked me very kindly. She appeared cheerful, like any ordinary woman. I did not see anything out of the way. Had known her as far back as 1854 or 1855. Am acquainted with her reputation for chastity prior to 3d November, irrespective of any connection between her and Mr. Crittenden.

Cross-examined: I was on the police force and I heard her talked about—cannot name anyone except a lawyer in this city. Passing along the street—I was an officer and would be on the street—parties would talk with me as they do with officers at present. They would say “there goes one that is on it”.

Mr. Cook: Let me ask you when on the police force if you did not hear that remark thousands of times when women would be passing along the street and there was a crowd of men, “There goes one that is on it”? Yes, sir.

H. L. Roby: Lived in Virginia City about six years. Her reputation outside of her relations with Mr. Crittenden was bad.

Cross-examined: I have been here about a week; came down on business of my own, milling and mining at present with the New York Company's mine at Virginia. Do not own any mine. Was Deputy Sheriff in Virginia. In 1863 persons would say,

“That is Mrs. Fair whose husband shot himself”, and in 1864, “That is Mrs. Fair the secessionist who has been having trouble about those flags.”

William Campbell: Reside in San Francisco and am a lawyer. Prior to coming to San Francisco resided at Downieville and Virginia City. Am acquainted with her general reputation for chastity during the period that I resided in Nevada; it is bad.

John W. Gashwiler, O. J. Hutchinson, J. F. Hutton, W. W. Stow, John E. Doyle, J. N. Estudillo, James Root, A. S. Ohn, testified that in Virginia City and San Francisco the reputation of the prisoner for chastity was bad and that her relations with the deceased were spoken of most unfavorably.

George A. Nourse: Reside in Oakland and am a practicing lawyer in this city; know the defendant; saw her on the boat going from San Francisco to Oakland three days before the shooting. She wanted to know where she could sit to see the passengers from the overland train come on board, and I showed her where she could look down the passage-way through which the overland passengers came. Her manner was very collected and clear.

R. B. Sanchez: Was residing at the time of the shooting of Mr. Crittenden at 591 Ellis St.; he was residing at the same house. He left the house on Wednesday evening between 7 and 8 and I saw him no more until he was brought home Thursday. He dined at home Tuesday night, came down after dinner and remained till about ten, bid us good night and went

up stairs to his own bed room. Next saw him at breakfast next morning. He came down stairs after I did into the dining room.

Cross-examined: Am a son-in-law of Mr. Crittenden. Heard him go to his room on Tuesday night. Do not know whether he went out that night or not; have no reason to suppose he did.

George R. Wells: I am an attorney in the law office of Wilson & Crittenden. Saw Mr. Crittenden prior to the shooting; he came into the office a little after three o'clock; asked him to attend to some business for me and he said he could not, that he was busy, and then he went out. He came in again and staid in the office until it was time for the boat. He pulled out his watch hurriedly and said to me, "The boat goes at five o'clock". I said, "No, sir, it goes at quarter past five". He cut me short and quick and said, "No, sir, it goes at five," and went out. I think he went out the first time and got shaved, when he came back his face had that peculiar white look.

April 12, 1871.

Mrs. S. A. Abbott: Am sister of the late Col. Fair. Heard her say on one occasion that she intended to kill Mr. Crittenden if he did not do exactly as she wished him to do. It was in regard to a present she wished him to give her and he objected because he did not feel able. She told him he had to give her that present or else she would take his life; never heard her tell him but she told me and her mother also told me the

same. It was a diamond set—diamonds and emeralds. She said it was valued at \$3000; that was four years ago next June or July.

Cross-examined: She promised to give me money but she never complied with her promises. She said that I was poor and had to work, for a living and she felt it her duty to assist me as I was her husband's sister. Said she would give me some mining stock and the interest of it would support me. Would allow me a hundred dollars a month until the interest would come in. She never gave me any money for myself or friends. Her mother made me a present of a bed-room set.

Mr. Cook: Did you write to your mother in December, 1870 that Mrs. Fair was the best friend you had on earth? I do not remember.

THE COURT: Mr. Cook, it is very unpleasant, particularly in a case of this character, to reprimand counsel; it places the Court in an awkward position. I do wish you would try the cause according to the rules of evidence.

Mr. Cook: I do not want any issue with the Court, that is the last thing I desire, but I will say that the Court ever since the commencing of the trial has at every opportunity animadverted upon me and my conduct and your Honor has been slamming at me in every way ever since I began. I have tried to conduct myself with propriety but have not been able scarcely to open my mouth without incurring some censure or reprimand, even when examining witnesses. I have endeavored to

do my duty with propriety, but your Honor has been constantly censuring me, and Judge Campbell has taken advantage of it.

THE COURT: I have heard enough of this, Mr. Cook. You have virtually told the Court, with respect to the conduct of the Court towards you, that which is a falsehood. Enter an order, Mr. Clerk, that on Monday next Mr. Cook appear before the Court to show cause why he should not be punished for contempt.

Mr. Cook: Very well. Then of course my mouth is closed.

THE COURT: This way of blackguarding the Court by counsel will not do, and in this Court it will certainly be punished.

Mr. Cook: It places me in a false position, your Honor—

THE COURT: That will do. Proceed with the case.

Mr. Cook: Where does your mother reside? In Lynchburg, Virginia. Did you write to her that Mrs. Fair had given you \$100 a month? Not to my knowledge. Did not you write Mrs. Fair a letter while she was East? I do not remember, I do not think I did.

Mr. Campbell: The letter itself should be produced that is presumed to be in their possession, if there is any such letter.

Mr. Cook: I produce it and offer it.

Mr. Campbell: Examine that again closely, and state whether or not it is your handwriting. Read it over, and see if anything in it recalls anything to your mind. [After examining the letter deliberately.] I have no recollection of writing it.

SAN FRANCISCO, Sept. 25th.

Mrs. Fair: I have not heard from you directly since you left, and I presume you have changed your mind, it is all right if you have, but I have bin the suffer. I have hoped until I have lost all hope and confidence, the prosual and inducement did not amount to much and thairfore I shall no longer expect anney remittance from you. I thank you for what you have already given. I shall live to sute myself in future and take no advice from anney person. I was unhappy liveing as you left me and I have returned to my style of liveing as when you first new me. I shall be candid and not deceived you for anney amount of Gold so the proposition is at an end that is all right if you wish to help the dear little ones I shall be pleased and not object. I hope you are well may *kind heaven* every help that child Baby. Respectfully,

S. E. ABBOTT.

Please burn this letter.

Albert Dousdebbs: Am a salesman in "The City of Paris" on Montgomery, corner of Sutter. On 3d November saw prisoner at noon. Showed her goods and debated the price with her. She told me she would come back the day after and let me know if she wanted the suit made or not. Her manner was just the same as when she always used to come in—she was kind of distant as she always was.

Geo. M. Sonergan: Am a salesman in the "City of Paris". Have known prisoner by sight since she made her appearance on the stage some six years ago. On the day of the shooting saw

her pass into the store. She was sitting on a sofa in the rear of the building when I went to lunch. She was waiting for one of the salesmen. Did not notice anything peculiar about her manner or appearance.

Rose Kelly: I am matron of the county jail. I was matron in Stockton in the lunatic asylum, two years, nearly. Know Mrs. Fair since she came to the jail and ever since. Was in the habit of seeing her two or three times every day. She was generally engaged reading or writing, excepting twice she was fixing a dress. When not so engaged she would lay down the paper and speak to me when I came in. Did not notice anything peculiar in regard to her manner. Sometimes she would repeat some stories in the paper or something out of the paper that she was reading over for the child. The nature of our conversations was just, "Good morning" or "How do you feel this morning?" or something like that. Sometimes she would ask me what time it was and I would answer her as near as I could tell. Whilst in the asylum I had opportunity to judge of the peculiarities of insane women. I would report to the doctor any change I would see in their conduct. I never saw during the time she was in prison, at any time, any manifestation of insanity.

Cross-examined: My duties in the county jail were to attend to the women—give them their meals. I do not take care of any rooms, except Mrs. Fair's; the women take care of their own cells. She was never on the bed when I opened the

door the first thing in the morning. Sometimes she would be on the bed and sometimes on a chair. I have seen her reading the papers often to her little girl.

Alexander Hildebrand: Am a book-keeper at Gray's piano and music store. Mrs. Fair came to the store and had a piano sent there on the 30th September last, and she came in afterwards on the day of the shooting or a day or two before and asked for a receipt for that piano, stating what she had had the piano sent there for, on what conditions, because she said she might not be able to do the whole business herself; that she would have to send somebody else for the money that was got for the piano when it was sold, and I gave her the receipt. She did not appear to be any different from anybody, but was merely transacting business in a business way so far as I could see.

Mathias Gray: Keep a music store on Clay street. Defendant left a piano at our establishment for sale; it is still there. I think it was the day of the shooting but I am not sure. She came and asked for a receipt for the piano; dictated the terms on which it might be sold, which was expressed in the receipt. Thought that she was winding up her affairs in some way or other. Thought she was about the same as I have always known her.

Maurice Dore: Am a real estate agent. On the day of the shooting about one o'clock Mrs. Fair called at my office to learn whether I had yet succeeded in lending forty-thousand dollars

on bond and mortgage which she previously gave me with an order to loan for her, probably eight or ten days previously. I replied I had not yet found a suitable investment; that I was endeavoring to find a good loan on good security, and that I could not find the security which she seemed to desire at the rate of interest which she wanted. She expressed great anxiety to have the money loaned; she stated it was producing nothing then, because it was lying idle in the bank, and she wished the income of the money. I said I would still go on, and try to find a suitable investment. Did not notice anything unusual in her manner and demeanor.

George H. Powers: I am a physician and oculist. Have paid special attention to the eye and the treatment of the diseases of it. Contraction of the pupil of the eye can be accomplished by an excessive use of opium or nicotine. It could be produced by the local application of the Calabar bean. That is the means used by oculists to produce that effect, dropped into the eye in the form of a tincture.

Lloyd Tevis: Reside in this city; have known the defendant by sight, I should think nine or ten years. Am acquainted with her general reputation for chastity aside from her connection with Mr. Crittenden and prior to the shooting of Mr. Crittenden; I think it was bad.

Cross-examined: Was a particular friend of the deceased. The first I heard speak of her conduct before she went to Virginia was R. Perley. There was a number that I talked to about it: Mr. Grimm, Mr. Sunderland, Judge Baldwin, Judge Heydenfeldt. Could probably name a dozen if I were to reflect upon the subject. Judge Heydenfeldt was a very warm friend of Mr. Crittenden's, so was Judge Baldwin and Mr. Grimm. I conversed with Mr. Crittenden upon her character, sir, very fully. Told him what I had heard about it, about 1865 or 1866.

Jessie W. Snyder: Am a former husband of defendant. (The witness produces certain papers.) I drew those articles up and Mrs. Fair and myself, or Mrs. Snyder as she was at that time, and myself signed them.

"SAN FRANCISCO, September 7, 1870.

"We, the undersigned, do mutually agree upon a separation, and that neither of us will oppose the other in obtaining a divorce; but we now give consent at any time in the future, in any State in the Union, towards obtaining a divorce.

(Signed,)

JESSE W. SNYDER,
LAURA A. SNYDER."

After a quarrel I made a demand that a separation should follow immediately. It was all in one day, in one hour, my demand for a separation and the preparation of those papers and actual separation from her.

Prior to our marriage she informed me she had been engaged to marry Mr. Crittenden and he had broken the engagement and then she said she was willing to relinquish all claim to him. I know Mr. Crittenden

had nothing to do with the procuring of the divorce or did anything in relation to that. Had no conversation with Mr. Crittenden on the subject of the divorce. It was a mutual agreement between herself and me that I should commit adultery and allow the divorce to follow.

Cross-examined: Did not do it; I was to go into a room with a woman, which I did in my room. Four witnesses and Mrs. Fair were there. The person I was going to sham adultery with was a woman I had hired. I don't know her name, never met her before. I don't know how much money I gave her; I think I had been dining

rather late and drinking a little too much. Went to a lawyer and asked him what were the laws of California in regard to divorce. He told me unless I had been six months a resident of the State I could not get a divorce from her upon any grounds whatever. I had only been a resident three months and so I found I must commit myself before I could procure a divorce. So I took the disgrace upon my shoulders. Knew Mr. Crittenden was a married man, Mrs. Fair told me that he was separated from his wife; that he was obtaining a divorce from her for the purpose of marrying her.

THE PRISONER IN REBUTTAL.

Laura D. Fair: (recalled) When I was ready to buy the Tahoe House I pledged my marriage ring to a gambler named Buchanan for \$250. Later I redeemed it; he gave me \$250 and he would not take any interest. He acted in a very gentlemanly manner about it, indeed. I have the ring yet. I redeemed it after I came from Havana. Heard the testimony of Mrs. Abbott with respect to threats. She came to see me; she said she was utterly destitute and dependant upon Mr. Hendrie with whom she was living. That Mr. Hendrie had treated her very badly; had beaten her children and made Clara blacken his boots, and she begged me for God's sake to help her. She told me she was Col. Fair's sister, and she thought I was able to help her. I told her I was willing to do so, and I told her I would do so if she would give him up and come there; that I would give her a room. I gave her a set of furniture and I told her I would give her \$100 a month if she would give him up and come there and live respectably. She promised she would, and she did come there. I gave her \$200 in cash, and besides that I paid a month's rent for her to Mrs. Hammersmith, and I gave her this furniture, too. When I left for Virginia City she promised me never to see him again or to act in that way again. Never had any conversation with Mrs. Abbott upon the subject of shooting Mr. C. I had a set which he gave me and I showed it to her long afterwards; that is the only time I ever said anything to her about the set of jewelry he gave me. I did not know the price, he said he gave \$700. It was a small set with little diamonds. Mr. Tucker still has a set which Mr. C. had made for me and I refused to have it. I told him he should

not spend his money for it. I had a good deal of jewelry and did not want it.

Mrs. Crittenden had been in my A. street house for nearly a week; I told Mr. C. that I could not stand it any longer. I would either have to leave my own house or she must leave, and that night if she did not leave I must tell her everything and give him up and go away. He said if I did tell her and left him he would take his own life and mine too. This night I heard them talking and I knocked at the parlor door and asked for a glass of toddy, I told her I wished to speak to her; I was not undressed. She came into my dining room, I commenced talking to her; he opened the door and she said, "it is me she wished to see and not you." Her back was towards the door; he went out and as he opened the door I saw him draw out of his pocket a derringer and show it to me and I thought it was to remind me of what he had said and it frightened me, so I did not dare to tell her as I was going to do. I disremember what I stated, but I was crying and made some excuse for having called her in there, or told her something I hardly recollect what. Mrs. Crittenden came to my rooms at Mrs. Hammersmith's. She asked me why I had returned from Havana. I told her I came because Mr. C. said he was dying and could not live without me. She said if I had remained away it would have given her an opportunity to win him back and she asked me to give him up and go away. I told her he loved me and I loved him and that she had not loved him when she married him. She said I was committing adultery; I told her it was she who was committing adultery; that I cared only for his happiness and loved him better than anything in the world and he loved me the same and I asked her what love existed between him and her. I told her if she could bring me a written request from him for me to give him up I would never see him alive again. She went on to tell me that she would never give him a divorce and that he never should marry me while she lived and that she would rather see him die at her feet before he should marry me. I told her she ought to get a divorce.

In the county jail Mr. Snyder said he knew enough to save me without any other evidence at all and he would testify for me if I would give him \$6000, and would clear me. Said if I would pay him \$4000 down he would wait till after he gave his evidence for the other. I told him I would decline doing anything of the kind. He got up and said he would give me a day to think about it. He did not tell me what he would swear to.

Have no recollection whatever of going to the store of Mr. Gray on the day of the shooting or within two or three days prior. When the young man gave his evidence here I had a faint recollection that I said something to him some time or other about a suit but I could not remember what it was. I have no recollection that it was in the "City of Paris" and even now I could not tell you what day it was.

Mr. Cook: Your Honor has a rule that if counsel testify in a

case they cannot argue it, but I should like very much to take the stand upon one question if that rule can be abrogated in this case.

THE COURT: I will suspend the operation of that rule in your case.

Elisha W. Cook: Two months ago a man who introduced himself as Mr. Snyder stated that he would like to have an interview with Mrs. Fair at the county jail. I told him I could not consent without seeing her, but I would see if she had any objections. He called and I told him that Mrs. Fair would receive him. Told me he wanted to write a note to her; I told him that was not necessary. The next time I saw him at my own house he had been subpoenaed as a witness in this case by me. He said that his evidence would be very material and very strong for Mrs. Fair—that his evidence would clear her. Told him I was very glad to hear it. Then he says, “But Mrs. Fair has not treated me well. She has not kept her agreement with me.” He said that he had been to the jail to see her and made it a condition of his testifying that she should let him have \$6000. I told him I thought it very strange as Mrs. Fair only wanted the truth, that he should want money for testifying to the truth. I told him I would see Mrs. Fair and “If she is under any obligations to you I will see what she has to say about it”. I did speak to Mrs. Fair and conveyed to him her answer. Told him Mrs. Fair was unwilling to buy any witness at all. He said then he would not be here. I said, “I have got you under subpoena, sir, and I do not consent to your leaving”. That is all.

THE SPEECHES TO THE JURY.

MR. CAMPBELL FOR THE STATE.

April 15.

Mr. Campbell: Gentlemen of the jury: The time has arrived when the duties of counsel are about to close, and the most solemn and important portion of your duty is about to begin. It is difficult to overrate the importance of and the public interest in the case which is now to become the subject of your deliberation. It is not an ordinary case of homicide, where a man or a woman has taken life. Were it not for the doctrines and principles which it has sought to engraft upon this case, the cause would rise little above the level of ordinary cases of homicide. But when the defense is in part, or in the main, grounded upon doctrines and principles which we regard as utterly sub-

versive of all social peace, harmony, order, and decency—when the attempt is made under the guise of a plea of insanity, to justify murder upon the most degrading and debasing principles, it is natural and it is right that the attention of the entire community should be attracted to the proceedings this day to take place. Your verdict will have more than ordinary significance. It will show the world whether you recognize those proprieties and social observances and practices which we have in our earlier years been taught to venerate and respect; or whether, under the influence of new lights, you are to cast aside the experience of the past, to throw away doctrines which we have always heretofore relied upon as resting at the very foundation of the social fabric, and to adopt new doctrines, alike repulsive to the taste and horrible to the understanding of mankind; whether this new system of free love, as it is called, is to be engrafted on our jurisprudence, and whether the wife of four husbands may step up to a man whom she may call her “husband before God,” and shoot him down, without a word, because he pays some decent respect to his earthly wife.

I am not here to-day to vindicate the faults, the errors, or the social crime of the deceased. I would to God it were possible in this discussion to let them rest in the cold grave with him. Their discussion, however, is a necessary portion of this day’s business; and while in regard to him I say this: Whatever of crime or of error or of fault he committed in his life-time, he has expiated with his life; let his assassin do the same.

The law of the land, gentlemen, provides that the deliberate, malicious, premeditated killing of a human being constitutes the crime of murder in the first degree; it also provides that, the killing being proved, the burden of proof to palliate, justify or excuse it shall rest upon the accused, unless the testimony for the prosecution sufficiently develop the fact that it was done either justifiably or under some excuse, or that the crime was simply manslaughter.

The law permits the insanity of the defendant to be set

up in her defense; because, of course, where a person, in a state of unconsciousness, where the will does not act, where the conduct of the party is entirely involuntary, where the reason is dethroned, commits such an act, it is not, and I say ought not to be, the subject of punishment. But the law looks with jealousy and suspicion upon defenses of this character; and it is determined in this State that when the defense of insanity is set up, the killing being proved by the prosecution, it rests upon the defense to show, and to show to the conclusive and entire satisfaction of the jury, that at the time of the commission of the act the defendant was insane. It is not enough upon this subject of insanity, for the party to establish sufficient to raise a doubt in your minds, to raise a reasonable question whether she was insane or not. She must establish her insanity by a preponderance of proof.

We stand, gentlemen, in this position: that the killing of the deceased by the defendant being proven, it is incumbent upon her to show that she was insane at that time. A defense of this kind is always looked upon with suspicion, because, in the first place, that condition is easily feigned and not always easy of detection. The prosecution cannot keep the defendant imprisoned on a criminal charge surrounded by a corps of physicians to examine minutely every movement that she makes. In a defense of that kind it is most important to determine this question: whether the defendant was insane before the commission of the act, because if the insanity arises at the precise moment of the act, it is certainly a most extraordinary coincidence, to say the least, that at the very instant of the party becoming insane, he or she commits a murderous deed. Where insanity has not preceded the commission of the act, the presumption of necessity is strong indeed that the act is not any result of insanity but the act of deliberate will.

In this case there is no question and no doubt about the shooting; but it is one of the extraordinary features of this most extraordinary case, that from some things that have fallen from defendant's counsel, and from the course of

their inquiries I am led to suppose they will probably ask you to believe that Mr. Crittenden was not murdered but that he died of inflammation of the bowels.

I do not propose to insult your understanding by discussing the question as to the cause of his death. A man, apparently in full health, was shot down. He scarcely spoke from that time. He was insensible at the start. He continued either insensible or partially conscious up to the time of his death. He was shot through both lobes of the lungs and through both auricles of the heart, and the wound he received was such that it was perfectly wonderful that he did not die sooner than he did. Now, gentlemen, if you choose under those circumstances to say that he died from inflammation of the bowels, you can say so by your verdict. I will not discuss it. I say, then, that the fact stands here proven beyond all reasonable doubt that this woman, without a word of provocation at the time, without speaking a word to the deceased, or being spoken to by him, walked up to him and deliberately shot him down, and that from the effects of that wound he died.

We then have to come to the defense and to ascertain whether or not at the time she shot him she was insane. This has been sought to be established in two ways: First, by the evidence of the medical attendants and nurses, and then by the evidence of the correspondence between the parties.

I propose, first, to discuss the medical evidence and to show what its value is. Two so-called medical witnesses have been examined: Dr. Lyford and Dr. Trask. As to Dr. Lyford, there was not a man in this Court room who heard his testimony who did not say from the very moment he took that stand, that he was simply a professional mountebank. He came here crammed with a medical dictionary. He threw all kinds of medical terms at the heads of the jury, and he was utterly incapable of addressing anybody in plain English. The man's testimony was as absurd as his demeanor. But taking it at its fullest value it did not tend to establish in the remotest degree anything like insanity on the part of the defendant.

This man testified as to the defendant being afflicted with ailments which are exceedingly common, as we all know, among women, and he testified to her being at certain periods which are general among women, in a certain state of nervousness; that she was very nervous; that she was very capricious. And he goes as far as to say that she was incoherent sometimes. But that was at particular periods; at the time when the usual occurrence took place. He did not, while he was upon the stand, pretend to carry anything she said or did beyond the borders of caprice. Now, caprice will not justify murder. Because a man or woman has a capricious temper, or because a man or woman is laboring under some little physical ailment common to the sex, that won't justify the commission of murder; that won't justify indulgences in all the caprices which may enter into the head of a man or woman. Now, when he is asked to explain what she said or did, he is under this difficulty:

Q. In what way is this nervous irritability displayed?

A. By generally excited, nervous, irritable condition of the system throughout, both mental and physical in some considerations of the troubles. She would be capricious and generally nervous and irritable.

Q. What did she say that made you consider her capricious, nervous and irritable? A. Well, things were not going right, generally.

Q. What particular thing did she say that made you consider her capricious, nervous and irritable? A. It is very hard for a physician to speak of these little technical idiosyncracies of females. There are many ways in which these things are exhibited. There is generally nothing going right and they are generally nervous, in an unsettled state of mind. Now there is the evidence of insanity which they have picked out from the whole of this woman's life up to the time of the shooting. Those were the worst manifestations and what were they? Why, nothing but what was the most common thing on earth; nothing but a little nervous irritability and excitement about the period of menstruation.

So much for Dr. Lyford as to the matter of insanity.

Now he is followed by Dr. Trask. In these cases of insanity where it is genuine and where the insanity has existed for some time, the parties always have it in their power to produce an abundance of testimony for the purpose of showing the condition of their minds. Daily associates, the inmates of the same house, the persons whom they see and converse with from day to day; the mother who was constantly by the side of this woman, the servants that waited upon her, the different persons with whom she was brought in contact, might all have been brought forward here as witnesses to testify as to her stated condition anterior to the shooting. Why, in the name of common sense, is not one placed on the stand to prove that she ever in her life up to the moment of the shooting uttered a single syllable indicative of insanity? Why is it that this woman who was so dangerous, who was in such a mental condition that she was prepared to commit murder, never made a manifestation of violence in the presence of any of her immediate relatives, friends, associates or servants, up to the time of the murder of Mr. Crittenden? The failure to present testimony of this kind creates the strongest presumption against the defendant. Even Lyford with all his professional brass does not attempt to tell you that this woman was insane before the shooting. Dr. Trask's testimony goes to show how far a man's sympathies may run away with his judgment and how far his intellect may become a perfect subject of his heart. It was the most extraordinary I ever heard delivered on the witness stand by an educated, intelligent physician. He does not hesitate to tell you that up to the time he became the professional attendant of the defendant at the bar, he believed she was shamming insanity. He had seen her at the city prison, but afterwards when he was retained and became her physician and was brought into daily contact with her and had his sympathies aroused, he began to change and modify his opinion, and he kept on dreaming and dreaming until he delivered here the most extraordinary testimony that ever fell from the lips of a medical witness.

He was inquired of on his direct examination in regard to

her appearance and condition at the menstrual periods. He had answered that at such times she was very unreasonable and very violent, and so violent at times that she went so far as to threaten or suggest that she would discharge him and even sometimes threatened to discharge Mr. Cook. Well—that was a question of policy and not of sanity. I do not think that that is a very serious evidence of insanity. Here are these two medical men both visiting this woman, both knowing that she was to be tried for her life, that all the indications in regard to her insanity were of the highest importance, that the language she used and her conduct and demeanor while in prison were of the highest importance in elucidating the true condition of her mind, yet there is not one of them who can remember one single word of a violent character which she used during that whole period of time toward a single human being. Is it not a thing of wonder and amazement that a medical man who has been studying the case and preparing himself for testifying in regard to it, the retained advocate of his client, should not be able to recollect a single violent expression made use of by her during a period of three months? It is a little steep. But Dr. Trask is brought in to repair damages afterwards and then he testifies to that which is as utterly inconsistent with his former evidence as anything possibly could be; to show that the defendant in her violence wants to murder both her mother and her child. He has already sworn that she never used an expression of violence toward her child. He has sworn that he cannot answer to a single violent expression that she ever used, and that he cannot designate a single person toward whom she ever used any violent language. But four or five days afterward he comes upon the stand and he swears that he had heard her time and time again and over and over again threaten to take her mother's life if her mother said that there was insanity in the family. And what is more monstrous than that we hear him testify again in relation to the child, that she had threatened that child's life from twenty to thirty times during the period of the time that he was in attendance upon

her; that she said she had an almost irresistible desire to take the child's life, to destroy it. And yet he did not attempt to save it or to caution her or any one against having the child there, nor to caution the authorities or any one else against the disposition and temper of this maniac mother. Were I on the jury I should put the most mild and charitable interpretation upon it and I should say that the man's sympathy for the defendant had run away entirely with his judgment, his memory and his brain.

I regard Dr. Tucker's testimony as utterly valueless; he was not a physician in attendance and all there is about it is that Mr. Cook supposes him a case and goes through a theory in regard to his defense about a broken hearted woman who had been seduced under promise of marriage and all that sort of thing, representing everything in the strongest possible light in favor of the defendant and then assuming that all his theories and statements were true and asks him, "Supposing that to be the case would not you think the woman insane?" The doctor says "Yes." Then I say, "Suppose, doctor, that the circumstances were changed would not your opinion be changed?" He replies, "yes, sir, that might very easily be". That is the end of Dr. Tucker, that is all there is of him. And then in regard to Dr. Dean, there is no more in regard to him. That is all there is of the medical testimony. This testimony of experts has figured a great deal in courts of justice and a great deal of consideration has been given from time to time to that subject by judicial authorities and the result of it after all is this, that on this matter of examining experts, it very frequently happens that their examination tends more to confuse and perplex a court and jury than it does to enlighten them. It is no uncommon thing to have a dozen experts called upon in regard to a certain state of facts and on one side of the case they will swear to one scientific theory and on the other side a dozen other experts will swear to an entirely opposite scientific theory and then the court and jury are called upon to decide between them. Now here is an authority which I will just read, a few words from a

very able article on this same subject in the American Law Review, the April number, 1871.

Mr. Quint: I do not know about the propriety of this being read before the jury. Greenleaf, I think, lays down the doctrine—

Mr. Campbell: How is it that the gentleman is reading from Greenleaf?

Mr. Quint: That is a law book.

Mr. Campbell: So is this a law book.

Mr. Quint: I do not know as it is. You are holding in your hands a pamphlet only.

Mr. Campbell: Well, one is bound in calf and the other is not, that is the only difference.

Mr. Quint: I cite from Greenleaf's Evidence. In speaking in the text of professional witnesses, or rather of experts, and discussing who may be examined as witnesses with reference to any question, then comes this note which says, "But, professional books or books of science are not admissible to be read." If this is an adjudicated case he is about to read, if it is a case that has been tried in Court and determined then of course there is no objection to the counsel referring to or using it in his argument.

Mr. Campbell: It is a series of adjudicated cases.

THE COURT: I understand it is written by a jurist and referring to different cases, if it is the article which I have read.

Mr. Campbell: That is exactly what it is and this American Law Review is a work of standing which is read in all the Courts as your Honor well knows. It is a standard publication and one that is constantly referred to both in District Courts and the Supreme Court and all over the United States. It is perfectly absurd. Nobody ever heard of a lawyer being interrupted when he was reading Greenleaf in the course of a trial.

Mr. Quint: That is a law book.

Mr. Campbell: Well, is not this a law book?

Mr. Quint: I might go out and get some blue covered or yellow covered literature, rather, and read that to the jury with the same propriety.

Mr. Campbell: You can bring in any covered literature you please and I think that yellow covered literature is exactly applicable to the trial of this case, because nowhere except in yellow covered literature can the principles upon which this defense is based be found indorsed.

THE COURT: I will allow you to read the book.

(*Mr. Campbell reads from page 439 American Law Review, 1871*):

So much then, gentlemen, for the testimony of these experts. The nurse is called; there is nothing proven by her throughout her testimony with the exception of that which might very easily happen, which both their own chosen phy-

sicians say might happen to a person in the full possession of his senses originally, who had committed a deed of horror and who labored under the excitement incident to that condition. She bit two tumblers. All these hysterical performances are just what you would see in a person of violent passions who has committed a horrible deed, who began to appreciate its possible consequences and results; who saw, when the excitement was over and the reaction began to set in, the gallows stare her in the face. It was natural as the sequence of the savage excitement of this woman at the time of the murder. And when Dr. Trask himself went there in the first instance during the very flush of this excitement, when he made his inspection, then being without fee, then not being retained, he said himself that it was all a sham and so told, not only the officers of the prison, but other persons outside, his opinion in relation to it. With regard to Dr. Lyford's testimony. There is one thing in the testimony which has some little significance. He told you that at the time of the commission of this offense, she had spoken of her condition at certain periods; that she had then suffered a great deal of pain, that she then was, as he describes it, in this incoherent condition of mind. But he goes on to state substantially that she was not so at the time that this shooting occurred on that day or the day before.

Q. Had she been confined to her bed at all at any time within the two weeks prior to the shooting? A. Not in the general acceptation of being confined to the bed. There were certain times of the day when she was unable to be out of her room, in which she was suffering most acute pain in consequence of nervous excitation.

Q. And then she was not fit to go out? A. No, sir.

Q. The times she was suffering so much from nervous irritability, she was not in a condition to go out shopping? No, sir; not these peculiar times; she was not, by any means.

Q. Was she at any time two weeks previous to this shooting? A. O, yes; a lady has to be very sick that can not go shopping.

Q. Say from the 1st to the 3d of November, was she at any time so sick that she could not go out shopping. A. I many times made that a special injunction upon her, to go out, even at her disinclination.

That is the statement of her own chosen witness. And it is corroborated by the fact that we have shown affirmatively that on that very day she was engaged in business transactions; that she went down to Mr. Dore, discussed with him the investment of \$40,000, which she then had in the bank, and discussed with him the question of a lease which she was about to make of a lot belonging to her child; went and discussed the dry goods question in the *Ville de Paris*; went into Mr. Gray's music store, and got a receipt for her piano; and that she transacted business in all those places with as much calmness and coolness as usual; that there was nothing nervous, nothing peculiar, nothing excitable in her manner; and that, although she came that day in contact with several persons on matters of business, there was not this nervous excitability or irritability which could not have existed without exciting the attention at least of some of those persons.

Now, this is, I think, the sum and substance of all the testimony in reference to actual insanity, or the pretext of it. That is the testimony directly offered by the defense.

But if we go beyond the shallow views of these so-called experts—if we go beyond the evidence of persons who upon that day saw the defendant and saw her condition, and if we take the question of sanity and view it in another light; if we consider the testimony which has been given on her behalf here in relation to her sanity, and contrast it with the exhibition of sanity or insanity which she has herself given, we will find that the fine spun theories of her doctors are at once blown to the four winds of heaven.

Gentlemen, before the defendant was put upon the stand, what was the impression which had been made upon your minds, assuming that you believed the evidence of the medical men? Why, gentlemen, you would have supposed that there was a weak, worn-out, feeble, dying woman, without either physical or mental strength; that her mind was a most perfect wreck; that she had lost thought, memory—the power of collecting ideas and of transmitting them to others; that she was, in point of fact, a mere mental wreck.

It was unfortunate for this wise theory of her wise men

that they placed her upon the stand. Have you ever seen upon the stand a sharper female witness? One of more ready resources? One who could invent a lie more rapidly and more plausibly, and tell it with a better grace? A woman more thoroughly prepared to vindicate and defend herself at all points? If you have, I have not. Have you seen any symptoms of insanity there, except that insanity which always accompanies and is a part of crime? That species of moral insanity which is not legal insanity at all, but which is simply moral pollution. That is the only kind of insanity that I have seen symptoms of exhibited by her in this trial. Does her memory fail her in regard to dates—in regard to transactions with which she has had anything to do—in regard to persons with whom she has not had any dealings? In regard to anything, except a sort of failure of memory just at the time of this shooting? and lasting, as she says, for some little time afterwards. Why, this weak and shattered mind—this woman whom they tried to persuade you is and has been for a long time a maniac, and not in possession of her right senses, has shown more ability, and more capacity, and more power, and more genius, than all the people put together who have been called on to prove her insanity. I will not say she has shown more than her counsel, because that would not be polite.

Gentlemen, observe this: This is not a broken-hearted woman, who is insane and does not know where she is wandering, and who has an indefinite, vague idea of having been on Kearny Street. She turns out to have been out shopping, and to have gone to see whether her money was invested; and to have discussed the question as to whether she could get twelve per cent. instead of ten for the sum of \$40,000, and to have inquired about the lease of her child's lot. The last thing that ever enters into the mind of a person in the condition in which this woman describes herself to have been, would be any matter of business. Her whole thoughts, her whole mind, her whole being, would be engrossed with the single topic—the subject of her delusion. It could not be possible to wander forth upon other subjects or on other

things. And yet you do find her, with all the accuracy of the strictest business man, negotiating for a dress, finding the price too high, bargaining with Maurice Dore, and getting her receipt from Mr. Gray. All this without any unusual appearances, at the time when she tells you that the tumult of her soul was so great that she can not recollect where she was during the day.

If she had been in the condition of mind that she now describes, it is utterly impossible that those men could not have noticed it. That delusion—that mania—that fearful bewilderment of mind would have stamped itself on every feature of her face, and have marked the lines of it so clearly that the most unobservant of men could not have failed to perceive it. The thing is a sham, a mockery and a delusion. She well knew that day—and every day, and at the moment of firing the fatal shot, precisely what she was about. But she was carried on by unrestrained, violent, vindictive, remorseless passion. She was regardless of the result to herself, as most murderers are who murder for purposes of revenge. In a very large proportion of cases of murder which are committed from motives of passion, hatred and revenge, the murders are committed openly and publicly. The tumult of passion—its influence and power over the mind are so great—the feeling of hatred, vindictiveness and malice is such, as to carry the party beyond all consideration of prudence. And offenses of that kind, where the intellect is as clear as it ever was, are of constant, or at least very frequent occurrence. The mere fact that crime is committed in open day is no excuse for crime.

I have called your attention to that branch of the case as briefly as I could. I will now call your attention to the next branch of the defense. Mark you, gentlemen, if this defense is a fraud, gotten up by this defendant—if what she alleges as to the cause which led to her insanity, did not exist; if it was her clear invention, why, then, you can come to no other conclusion than that this woman has invented the story for the purpose of exonerating herself from the guilt which attaches to her crime. If her whole narrative of

her first acquaintance with Mr. Crittenden is invented for the purpose of creating outside sympathy on her behalf, it is not the act of an insane person; but it is the act of a great criminal, who, having committed an enormous crime, seeks to cover up that crime by the invention of an enormous lie. How is it possible for anybody to believe the very first step in this narrative of hers about her intimacy with Mr. Crittenden? She says that Mr. Crittenden came there in the fall of 1863, shortly after she had opened the Tahoe House; that she there formed his acquaintance; that he represented himself to be a single man; that he courted her as a single man; that he became, in the course of two or three months, engaged to her as a single man; that she continued to believe him a single man for a period of one year after the formation of their acquaintance and the commencement of the courtship.

The very first thing that strikes one in this story is its improbability. Here was Mr. Crittenden, a man well known, embarked in a profession which makes its members the subject of continual discussion; whose members are well and widely known in every community into which they enter. Virginia City in those days was not a large city, and is not yet. It was a place where everybody's business was about as well known to everybody else as in any other place in the country. Mr. Crittenden was a prominent lawyer; brought in contact constantly with people in all classes of society; whose name was to a great extent in the mouths of the people. To say that a woman to whom he was paying these attentions could be ignorant of the fact of his being a married man, and could have continued so, is on its face an absurdity. The first thing that an ordinary woman would do where a man commenced to pay her attention, and where he was escorting her about, and prominently in attendance upon her, would be to inquire about him.

Her friends would say, "Well, Mr. Crittenden appears to be paying you a great deal of attention; how is it?" Some of them would certainly know that he is a married man, and would say, "How is it you are receiving these attentions from

a married man?" Is it possible that she could have remained in ignorance of his being a married man?

Besides, it is impossible to believe that Mr. Crittenden ever would have been guilty of such an act of consummate folly as to tell this woman that he was an unmarried man; because the proof to the contrary would be so great, it would be so obvious. It was a fact that in its nature could not be concealed.

Again, Mr. Crittenden goes there in November. On the 4th of February (his son having preceded him by three or four weeks)—his wife goes there; and from the 4th of February to the 29th of June Mr. and Mrs. Crittenden kept house in Virginia City; Mr. Crittenden being at home every night, sleeping at his own home, and with his own wife, going about on the public streets publicly with his own wife. And yet this woman never found out that Mr. Crittenden was a married man! Why, gentlemen, there is not a man on earth who is idiot enough to believe that story. There is not the slightest shadow of a foundation for it. It has been invented since his death. His tongue is silenced; he can not speak for himself here to-day.

It is said it was impossible for this woman to have killed Mr. Crittenden, because she loved him; because her attachment to him was of such an extraordinarily violent character that it actually crazed her brain and made her take the life of her best beloved.

She has told you herself that she loved him better than life, and that she still loves him better than life—and yet, is it not the most extraordinary thing on earth that she, who in life loved him above all others, whose love for him led to insanity—that she, of all women in the world, the most loving and affectionate—she, according to Mr. Cook, the most sincere mourner over his grave, has been three weeks here, through her counsel, her witnesses, and her correspondence, striving in every possible manner to blacken and degrade, and subject to ignominy and insult, the memory of the man whom she thus loved?

Why, gentlemen, it is a part of the play. Had she enter-

tained the affection which she has professed, had there been one spark of real feeling left in that savage heart, she would rather have walked forth a thousand times to the gallows than have subjected his memory to the fearful ordeal to which it has been put here. Every weakness, every error of his life—aye, the one great error of that life, in other respects noble and honorable—dragged forth to the public gaze, and published all over the world; the man's memory degraded and dishonored by her who says she loved him best. Do you believe it?

I now come to the next stage in the drama. Mr. Crittenden, it seems, promised to marry her. So she says. According to her idea they were married when they were born. But the engagement she here speaks of is an earthly marriage; a marriage according to the absurd ideas which the ignorant barbarians of the present day entertain; a marriage according to the forms of law; a marriage which we generally suppose is sanctioned by decency and public respect. An engagement of that kind was entered into, she says, with this man, she supposing him to be then unmarried.

Gentlemen, she is very careless on the subject of marriages. She has married four husbands according to these miserable earthly enactments, and she has married one according to the laws of God; but she was in no condition at the time of this alleged marriage contract to marry anybody according to the forms of human law; that is, without going to Utah. She was then the wife of Mr. Grayson. She says she did not know it. I will prove to you, by her own handwriting, that she knew it perfectly and thoroughly—that when she went to New Orleans, where, as she says, she discovered it through Bob Mitchell. Bob went to the records—that is her story—and in that way, to her utter astonishment, she discovered that she had not been divorced, and that it was necessary, in order to be divorced, to threaten a prosecution against somebody else for bigamy. She had lost sight of her higher law theory then; she had not inquired whether Tom Grayson had met his affinity, and had made a higher match than an earthly one or not, but she threatens him with a common,

vulgar prosecution for bigamy unless he will get a divorce for her.

Unfortunately for her, her correspondence shows a different state of facts. Here she writes, on the first of May, 1869, from New Orleans, to Mr. Crittenden:

"I have taken great care not to be known as Mrs. G——n."

Why, if she had been divorced from Mr. Grayson when she married Colonel Fair in 1859, ten years afterward—she had been married in the meantime to a second husband, and her third husband had died—what necessity was there for her, ten years afterward, to be careful not to be known as Mrs. Grayson?

Then she writes: "I simply wrote a letter to Tony Grayson stating the case and what I wished Tom to do, and if he failed to do so, that I would immediately have proper steps taken and have him arrested."

Now do you believe that woman did not know all about the existence of this? If she had made any sudden discovery, how would her letter have run? It would not have been worded, "I have taken great care not to be known as Mrs. Grayson." But she would have said, "To my horror and amazement I have just discovered that I was not absolutely divorced from Mr. Grayson. I have discovered that his lawyer neglected to have a final decree entered in that case, and I have taken immediate steps to have it done." She would not have assumed the fact to be known to both herself and Mr. Crittenden; she would not have undertaken to write a letter to this man's uncle, threatening him with a prosecution for bigamy if he did not go and get a divorce for her.

When the defendant was on the stand she was a little too fast with regard to those divorces. She had all those papers; Mr. Crittenden got them for her. Mr. Crittenden gave them to her; she had them all. We asked her to produce that record and those papers and she failed to do it. She does not deny that she has them; she has sworn that she has them, but she dare not produce them for inspection. We show this woman married to Grayson; she shows no divorce; she was a married woman when she professed to become engaged to

Mr. Crittenden. She had then a living husband from whom she was never divorced certainly before May, 1869; whether after that or not God only knows.

That then is the second falsehood in this matter. She could not have been engaged because she was not capable of being engaged to Mr. Crittenden at that time; she was a married woman and she knew it. And her denial that she did know it here upon this stand when her life is at stake, will not weigh one feather against the intrinsic evidence of her own letter and against the established fact that she was a married woman and that her husband is still living, and the total want or absence of any proof of a divorce or legal severance of the bonds of marriage between them. Though in her letters she often claims that Mr. Crittenden has made a promise to marry her, yet Mr. Crittenden never in any letter of his acknowledged the existence of such promise on his part. It is true in one letter he tells her—and it is greatly to be regretted that he ever suffered himself to pen such lines—that in the sight of God she is his wife as much as if they had stood up before a priest and had been married according to the forms of law. To his mistress he indulges in this kind of hifalutin nonsense, that she is as much wife as though they had stood up and been legally married. But neither of them were in a position to marry legally. He was a married man, she was a married woman. They both thoroughly understood their respective relations. And it was to be only a breach of every law of morality, of every law of right and everything that is really proper, decent and moral in the relations of human society, that Mr. Crittenden's relations with his family could have been severed.

I do not believe he ever meant to sever them; the fair inference from his entire correspondence is that he never did intend to do so. I think he never promised her to do so, except in this: that he may have promised at some time, in the height of his infatuation, to abandon his family after he had made a fortune sufficient to support them, and live with her; that is possible, but no further.

One thing is perfectly clear: he could not promise to marry because he was a married man and she was a married woman. It is perfectly clear that he did not abandon his family; that for a while he sent her away on account of his family his letters prove beyond all controversy. She says that she was his wife and that he was permitted by her consent to eat his meals with his family; but that so far as the relation of husband and wife was concerned, it was by mutual agreement out of respect to Mrs. Crittenden; that he was not to sleep in the same house with her, and that he did all along occupy separate apartments.

Now if it should turn out on investigation of her letters that that nice little theory is an absolute and deliberate falsehood; that she knew perfectly well that Mr. Crittenden lived with his family until the night she followed him up there after he had been at her residence, was living in his own house and sleeping with his own wife, you will see at once that this is only one additional lie in a series of falsehoods invented by this defendant for the purpose of giving a false gloss and coloring entirely to her relations with Mr. Crittenden.

Here are extracts from one of those letters written in 1865 or 1866. I shall not read all the nonsense and sickly sentiment and disgraceful trash that it contains:

"Oh! my darling—my darling! How can you do me so much injustice as to doubt my love. How could I write except that I love you—and this I always said—this I could say without letting you see how bitterly I felt at being kept from you by her. I promised myself not to reproach you. What does that mean? It simply means this—I promise not to reproach you for having sent me away on account of your family. And her presence with you—for your consenting to sleep with her, when you know the bitter, bitter, galling feeling it brings to my heart."

A remonstrance of this woman to a husband for sleeping with his own wife—the mother of seven loving children—to whom he had been united for upwards of twenty-five years. "It was a bitter, galling feeling" to her that this husband should presume to be so audacious as to sleep with his own wife! "Bitter, galling feeling," indeed! Yes, it was a bitter, galling feeling, which prompted her in her murderous rage

to point that pistol at him and take his life. Kind on her part was it not, that she should never urge a man to send his wife to the right about and to turn her children into the streets, I suppose.

"But, darling, I am trying to banish all doubts and dismiss them from my heart. It is very hard to do, when I know that night after night you are sleeping beside another woman. It seems to me that you might have made her choose between you and the furniture."

"Might have made her choose between you and the furniture!" Oh, shame! Oh, horror! Is it not wonderful; is it not amazing, that, when that infatuated dead man read those lines, he did not then feel the veil drop from his eyes; that he did not then see the enormity of this woman's true character, and that he did not at that moment and forever drive the vicious wanton from his heart? There is not in the annals of human correspondence a letter more infamous or more disgraceful than that which the counsel has called upon me to read. Let us see if there is any more of it.

"Then if she insisted upon despoiling my house, and almost everything in the shape of furniture, which I held sacred, then you ought to have remained mine—all mine."

In other words, there was to be an unheard of division of property in the household. His wife was to take the furniture, and she was to take the husband.

"Do you think I could ever wish any portion of the furniture back in those rooms after she has desecrated it with so much wrangling."

Insolence upon insolence! Infamy piled on infamy! The hand that wrote that letter should have palsied at that instant. The heart that conceived such sentiments as those is not a human heart—it has nothing human about it. The woman who could write such a letter as that would commit any crime on earth. To her, murder in the gratification of her passions would be a venial pastime, a simple matter of amusement. A more heartless, more degraded, more infamous letter never was written by any human being.

"Let her take it all—the dear old bed, the chairs in which you have held me in your arms. Yes, let her take *them*. She *can't* take your heart, and she *shan't* take your happiness. We will consecrate the new furniture.

"Now, answer me candidly, darling—do you think your dear body will or can ever seem so purely and entirely mine, as before it rested upon the same bed with another?"

Her idea of consecration is a little different from that which is generally received in Christian communities.

"You shall kiss me in every corner of each room, hold me in your arms in each chair, lie by me on the sofa, hang over me at the piano, and sleep with me in the bed. There, I defy her to prevent it, you darling. God bless you, my darling—don't doubt me again."

Had not he been blinded by the most extraordinary infatuation, he never would have doubted her, for he would have read her true character in every line of that letter, and he would have fled from her as he would from a pestilence.

She says that she met him as a single man, and so believing, that her affections became engaged to him. There is a mass of correspondence here, involving about three or four hundred letters from her. There is no pretense, in any one of those that any such fact as that ever did exist. While many of the letters contain upbraidings for breach of promises of various kinds, there is no allusion or pretense in that correspondence, from first to last, that she ever regarded him as a single man, that she ever became engaged to him as a single man, or that she ever believed him to be such.

If I were to read all of these letters they would weary you to death. It is claimed that he promised several times to marry her. No such promise can be found anywhere in his letters. He never admits it; he never asserts it. He never says in one of those letters, "at a certain time I will marry you;" he never says, "I will go to Indiana;" he never says, "I will get a divorce from my wife."

On July 8, 1865, she expresses her regret for her banishment—she regrets her banishment. She says she has been sent away from him on account of his family. This woman has got this man infatuated and she uses every art of woman

to bring him back to her. You will see this running all through this correspondence.

"Warm Springs, August 8th.

We decided when you were here exactly what we would do in the future. Now tell me does this trouble interfere in the slightest with our arrangements? Answer me fully, candidly. I shall not come home on Saturday unless you assure me that your determination is unaltered with regard to gratifying me and satisfying me in a few matters, viz: You will not leave me any night after my arrival; secondly, you will have but one suit of rooms and they the same old rooms at my house; thirdly you will have only one so long as we both live. So, that you will spend the night upon which I arrive with me and all and every night with me."

There is not a word of marriage. He is to come back and live with her. He is to occupy but one suit of rooms and he is to sleep with her and her only all of the time; that is the agreement so far as that matter is concerned, and he is to "love" her as she calls it.

This letter I offer as an illustration of some of the constituent part of this woman's character, that of vanity.

"Darling, kneel by the bed on Wednesday night. You will have just received this letter. Listen then, I will be by your side.

Good-by, my poor darling."

The next is a letter which from its deep malignity and brutality is well worthy of your attention, because it in common with her other letters, gives the most perfect key to the true character of this woman. Here she says it sounds malicious but she is only human and "it is the province of angels to forget and forgive and I don't aspire to any such perfection."

God knows she did not. She would not be here today if she ever had aspired to such perfection. I call your attention to the infamous malignity displayed in this letter—a proposition on her part to another woman's husband to give her a bill of sale to their furniture, and that the wife shall know it and she is determined to let her know it; and she knows it must sound malicious. I should think that if she had had the slightest spark of human feeling left—if she had been any other than the most infamous woman on earth

—she never could have penned those lines. It is a part of this correspondence which goes to show, not only the wickedness, the debasement of mind and soul which characterizes this woman throughout, but also to illustrate the intense malice which governs her composition, which is the leading feature of her character.

If such feelings as could enter the heart of such a woman can be dignified as love, then the word love cannot be deemed to express what it has always heretofore been supposed to express. Lust should be the general signification of the word, for the word love in its higher and holier aspects is not and cannot be understood as forming, and does not form, any portion of such a nature. Love! Indeed! A woman writing the most malignant, degraded, insulting and shameless stuff to a married man and talking in the next breath about love. She never understood the meaning of the term.

“Of course I can stand a brocatelle.” I should think she could—I think she can stand a good many things. “All, everything that your dear heart and hand provides for me will appear perfect in my eyes.”

I have no doubt she was perfectly willing to get all she could of him. While she was keeping this infatuated man perfectly impoverished, getting rich off the spoils; while he was buying furniture for her one day and she was selling it the next and pocketing the proceeds, she was perfectly willing to accept of brocatelle furniture, or clothing, or as the notes disclose, coal and wood or anything else on earth that cost money.

“If your presence can give relish to everything will it not make the plainest home appear a palace? Yes, darling, to me it will appear a paradise no matter what it is. I’m glad you like our piano. Does Mr. Munday say it is a good one?”

Now she has got a piano out of him! It is the same piano that cost \$600 and sold afterwards to Gray for \$500.

“You must see that it is well protected from the whitewash and paint. You did not tell me what you have done and intend doing with your furniture. I want to know. I do love my darling better than all the world—more than life—more than you—no! I won’t

say more than you deserve, for you are goodness, gentleness itself, worthy to be loved, worshipped, idolized, just as I idolize you."

She idolizes him then. She was receiving brocatelles, pianos and sets of furniture. She was reveling in luxury and getting rich, while he, like every man similarly infatuated, was traveling on the road to ruin.

From the next letter it appears that she wants a new set of furniture and she reminds him that she is a mixture of storm and sunshine. I do not know where the sunshine comes in. It seems to me to have been generally storm. That she is a mixture of spitefulness and many other qualities is apparent indeed. Here is a woman speculating in stocks with money in the bank, getting rich off of this man and yet he must buy her everything she wants to use. And she! oh, she was not a mistress with any mercenary ideas, no lust for money. It was not Mammon she was after, but only after Crittenden. She says:

"Now darling, humor me in this because I know myself in this matter and I know how devilish I feel whenever I think even of some things in the past."

She feels devilish whenever the wife has—exercising the blessed influence which belongs to her character and position—dissuaded her husband from committing some impropriety with this women; whenever for good and virtuous purposes she has sought to recall him from the path of error; then and every time down to the last fatal shot, this woman "feels devilish" thereat, and she culminates the whole transaction with a devilish deed.

"Wherein she accomplished what she desired in defiance of my wishes."

Great God! Is this woman empress of the world? Are husbands to leave their wives and cast off their obligations to society, to abandon their children and prostrate themselves at her feet, submissive to her will; and is she to "feel devilish" and "act devilish" whenever they do a decent act or refuse to do an indecent one? I ask you whether in the whole history of bad women you ever read anything emanat-

ing from the pen of any one, even of the most degraded and debased of her species, which for horror and disgracefulness or for devilishness and infamy, equals at all or rivals in any way the correspondence of this most abandoned of women.

She says, "Now darling I am trying to be good."

That is her idea of trying to be good—to try to separate the husband from the wife, to break up the family and insult the mother of seven living children and several dead ones. That is trying "to be good" in her vocabulary. She has a peculiar mode of using the English language; she departs from all the precedents and she establishes a new system of morality of her own. What is regarded by all the rest of the world as good and praiseworthy is to her only evil; and what is regarded by others as baseness is to her the perfection of goodness. That is what she calls "trying to be good"; and she continues:

"I ask you to help me by not having constantly before my eyes that which will raise my most revengeful and vindictive feelings. You are so good that you will scarcely understand such a disposition. Heed me this time darling, it will save bitter feelings and prevent bitter words."

He was not to have any peace. If he allowed a single article of furniture which his wife had used to remain in the house, there were to be bitter words and heart-burnings. Everything must be done to separate the husband and the wife and to place the harlot in power, and all this was to be done in the name of virtue and goodness.

Follow those letters through, gentlemen, and you will find just one thing and that is a devilish effort to separate the husband from the wife, to heap contumely upon a good woman, to endeavor to force herself upon this infatuated man and to maintain over him the power which she most wantonly and wickedly exercised. She says in another letter that her health is wretched. If so it was only on a par with her morals. And asks him to love her always, that at least she says "you own to having promised," showing that that was all he had owned he had promised. Then she says, "I think I am going to die."

That is exactly the way an artful, designing, diabolical woman plays upon a man who has been infatuated with her, when she begins to feel that her hold on him is slackening, then she feigns ill-health. Probably she is going to have consumption! The fate of Camille is before her eyes and she wants to play the part of Camille upon the unfortunate man who happens to be her victim.

She next tells him to sell "Justice" whenever it will bring what it cost, without waiting to consult her about it. So that in the same breath she is dying of consumption and speculating in stocks. Now here is another beautiful letter to which I call your attention. It is a nice little compound of love and avarice—love, I said; I meant lust and avarice. Here she notices the change in him, as she says, "Ever since all your family were around you." There it is again, whenever Mr. Crittenden shows a returning sense of duty, whenever he is there with his family, whenever he seeks and struggles to get rid of this incubus which is fastened upon him, that very instant she writes to him imploringly and seeking to regain her influence. She says she has noticed the change ever since all his family have been around him. And she says she still has a right to expect everything from him. And still she remembers how long "this note has been in pledge and that it is still unpaid"; and she tells what her mother thinks of it—a pretty good hint that he has got to come up with that \$5300. She thinks that she ought to get a little higher price—that these \$5000 notes ought to be paid promptly—that there ought to be not merely brocatelles, pianos and all the other luxuries of life, but that her notes ought to be paid, and she ought to be enabled to go on with her stock speculations without paying anything if she loses—that if he loved her, he would not allow her to be compelled to spend her dividends from the Savage. She thinks he does not come down handsomely enough.

Gentlemen, it is really the most distasteful task I ever had in my life to read this infamous correspondence, but I am compelled to do it, in order that you may see precisely what manner of woman this is. In this very letter she says, "I

have had the devil in me." Gentlemen, it is not out yet. She says she has been tempted to come down on a flying visit, in order to cause a commotion in camp, where all now is so tranquil. In other words, she wants more money; she does not like the way things are, and that note of hers is not paid promptly. Whenever the money is not forthcoming, and he is living tranquilly, audaciously with his own wife, how shocking it is to her tender feelings, and, feeling devilish, she proposes to come down and kick up a commotion in the course of the coming week. Tender, sentimental, loving, affectionate hyena! She says she is afraid she might take some dreadful revenge. There, again, you see the savage disposition of the woman cropping out on every opportunity. She tells him that this wearing suspense is killing her. It has not killed her yet, but it is a great pity it did not before she committed this murder.

This woman, in all these letters, is following him up, hounding him, and wants to separate him from his family, and wishing to come down where he is, so that she may break up his family arrangements. She is never content except when she is attempting something of that kind. According to her statement here, she has written to him again and again that she wished to come, but he has never even replied to her upon the subject. That is, he felt his position. He did not want to bring this woman down from Virginia to where his family was. But she kept urging and urging to him to send for her, so that she could be here precisely to carry out the machinations which she has so fully foreshadowed in the correspondence I have read. In another letter:

"As for you going to some other place to forget me, you ought to know that I should follow you."

She means to follow him up anywhere.

In the conclusion of her letter, she actually asks this man, the father of seven children, to go and get up a fight with Dr. Bryarly about some supposed insult which she fanzies Dr. Bryarly has offered to her.

In another she says that he is the best of men, because he paid her \$1,500. That is her idea of the best of men. A man

who will give \$1,500 and a little more; for remember, she wanted to get \$5,000 for the note.

In this letter she speaks of the depth and purity of her love. This woman, with four husbands, trying to separate a married man from his family, to talk of the depth and purity of her love! She says she had always believed it alloyed with much selfishness. I should think it was. "But I now know that it is a capable, for your sake, of great sacrifices." We shall see what the sacrifices are when we get a little further. She says:

"I have no heart to speak of business, but I suppose it must be done. Please write me whether I may depend upon you to pay the balance on the note by the 19th of September, or whether I must depend alone upon myself; also whether you will give me enough each month for my support until I get into some business where I can support myself. I do not wish to be compelled to use for anything the dividends on the stock."

She wants to hang on to that, and she has got to have that note paid. She has got to be supported. Her heart is in a terrible flutter. She is afraid, evidently, from the tenor of something in his letter, that he is going to stop the supplies.

She says she dreamed she was dressed in white, and standing on the floor to be married. Well, gentlemen, she had been married so often, that I do not wonder at her dreaming about it. Then she drops into poetry. It may be poetry, but in my opinion it is only an attempt at rhyme, and it is shabby stuff.

You will find quite a number of these letters, gentlemen, in which she has a habit of dropping into poetry. It is better when she quotes it, than when she originates it. But as a general thing, people who are acting under strong emotions, and strong feeling, which is genuine and real, do not go to authors to hunt up poetry to express their feelings. They generally write down just what comes from their own hearts, on the spur of the moment, and send them to the person with whom they communicate. And if a woman is terribly broken-hearted from any treatment she has received, she generally writes in plain English, and does not resort to any such means as that.

In this letter she speaks of a woman who, by talking in

her sleep, so affected her husband, "that he abandoned her whom he loved, made a confession to his wife, and afterward became a minister of the gospel."

There again is the character of this woman. Everything that any other human being would regard as virtuous, right, proper and praiseworthy, is to her a subject of scorn. She hates virtue and the virtuous. She seems to love vice for its own sake. She never is happy except when she is saying some mean, bitter, cruel, contemptible thing. That seems to be her highest gratification.

In another she says that "this thing will end in murder or madness." "If you will not get a divorce, I will make her, or will ruin all." And she winds up by saying: "God bless you! love me, and do not be ungenerous and unjust."

What her ideas of justice are it would be difficult to define. But this letter is material, as affording a key to the subsequent action which she took. It was written two or three years before the death of Mr. Crittenden, at the time that she was in Havana, in 1868, two years before his death, and in that her intentions were clearly foreshadowed. If Mr. Crittenden does not get a divorce from his wife, Mrs. Crittenden shall. This woman, the kept mistress, is going to force the wife to get a divorce; and if she does not, "I will ruin all." Did not she follow up her threat? Did not she carry it into execution? Is not the murder foreshadowed clearly and distinctly in that letter?

In another letter she says that one of the three, in a certain event, shall die. She has heard that Mrs. Crittenden is in the family way, and, if she find out that, one of them shall die. She declares that unless Mr. Crittenden or his wife shall obtain a divorce one from the other, she "will ruin all," that she alone shall not be sacrificed. What was the meaning of it? Take it in connection with her subsequent letters, with the declaration which is contained in one of her letters to him: "Either she or I ought to die." With the threat made one month before it was carried into execution, that if Mrs. Crittenden ever came back to this State one of the three should perish. In connection with her action on board the

steamer, her marching up and shooting the husband in the presence of the wife. Can there be for a moment a doubt, from her own correspondence, from her own declarations, from her own avowals from time to time, that the deliberate, determined, set purpose of the woman's mind was that she would rule or murder?

But I do not propose to wear you out and exhaust your patience by continuing to read any more at present. You will find in the notes that passed between them, which she sent him, the most continuous, wicked determination on her part to separate this husband from his family, or to take somebody's life. It runs through the entire correspondence. It is evidenced from the year 1865 down to the period of the fatal catastrophe. There is one set purpose, fatal purpose, to be accomplished by her, and every time she is thwarted in it, every time that the better feeling of the husband prompts him to return to his wife, to whom he was under so many obligations—every time that he indicates a disposition to return to the mother of his children, to the woman whom he had sworn to love and to cherish forever, and to discontinue his relations with the woman with whom he had become infatuated—you find her resorting to every art which the lowest cunning and the most abandoned vice could suggest, for the purpose of creating a breach between the husband and wife, and a final separation between them. At one time, she is going into consumption; at another time, she proposes to enter a cloister. She utters reproaches, then appeals to her “darling.” The letters evince on her part a relentless, persistent determination that that man shall never have one hour's peace, unless he sacrifices every holy and sacred family tie; unless he abandons all which duty calls upon him to perform; unless he disgraces himself and his family in the eyes of the entire world, and becomes her abject, complete slave forever and ever. And the very instant that he rebels against this, that, by his conduct, by his letters, by the circumstances surrounding him, he indicates a desire to do his duty, and tread the path of purity, and to do that which is right by his family and his children, the temptress was

there by his side; urging upon him to take her back; representing her forlorn and desolate condition; is telling him: "You have ruined me; you have brought me to this forlorn condition; I am your true wife; your pretended wife is a mere adulteress; I am the woman to whom you are married, or to whom you ought to be married. Go on in the career in which I have induced you to start, regardless of all law, regardless of all duty. Go on and get a divorce; if you do not, I will make that woman do it. She shall! We must be husband and wife. You must give up every other tie, every relation in the world, and you must cling to me, for good and for evil!" No, not for good and for evil; but for evil only. He is to degrade and disgrace himself forever.

I ask you, if any other construction can be placed upon those letters? If you take a fair analysis of the character of this woman, you find money down to the very last notes. There is one that has but a few lines, that runs in this way:

"Darling, send me some coal. You had better go to a wholesale establishment, because it troubles you so often to send it to me by retail."

And so in regard to this thing and that thing. There is money here and money there; you find it everywhere—money! Everywhere throughout the correspondence, you will find her pass, in these letters which I have read, from the most frantic passion, to the consideration of the financial question. From heartache and agony, to a question of the Savage, and Gould & Curry, and the rise and fall in stocks. It is a perfect wonder that a man of Mr. Crittenden's discrimination in the ordinary affairs of life, could read those letters, and not see the real purpose of their writer. It is the most extraordinary thing in the world that he ever could be deceived in regard to the real character of this woman; that when upon these pages the blackness of her heart, the vindictiveness of her nature, were so clearly and palpably reflected, he, and he alone, was unable to see it! It was the wildest and most singular infatuation which ever acted upon the mind of a man!

You find here united all these elements; you find malice, hatred, vindictiveness, bitterness, disappointment. You find

her, originally and from the first, a woman without character—an outcast from society. You find then everything combining and prompting her, when she is thwarted in carrying out her purposes—to the commission of this murder. There was unquestionably a tumult of bad passions. There was unquestionably a great disappointment. For years and years, all through her connection with this man, she had accumulated wealth, and while she had managed to make his home uncomfortable and unhappy for him, you find her for these long years going on with this struggle. Her pride is wounded when she finds she can not make him absolutely or completely her victim. Her avarice is shocked when she finds that he has determined to live with his own family, and that the funds which she hoped to obtain through his exertions, will be devoted to a better, a higher, a nobler use. You find then all these bad passions aroused, and their force accumulating. You find them operating upon a nature essentially and absolutely vicious, and when you come to look for the result you need not look to insanity. There is enough already; with this naturally savage disposition, she broods over her disappointments; she finds that his family is coming back; that they are not exiles; that they are not driven off; that he has not abandoned them; that he does not mean to disgrace them and himself forever; that her empire is shaken to its very foundation, and that the man whom she has thus infatuated and enslaved, through a long period of years, has found a limit beyond which he will not go. And then she executes her deliberate, preconceived purpose!

Where a person asserts an intention to do a particular thing in a particular event, and that person subsequently, on the happening of that event, does the threatened act, you can not attribute it to anything except deliberate purpose and design. When this woman told the furniture man, Mr. Vollberg, a month before this shooting, on first being informed that Mr. Crittenden's family was coming back, that the house was being prepared for their reception, that the furniture was tasteful and elegant, that he was establishing his home upon a permanent basis, this woman, in the passion of the

moment, then declares, "If she comes back, one of us three must die," and carries out the professed purpose. And her mode of carrying it out; is it, or is it not, by evident design? How came she with that loaded pistol? She tells you she had been in the habit of carrying a pistol; that Mr. Crittenden had told her to do it. You have simply her own word for that; the word of a woman on trial for her life; the word of a woman who has invented falsehood after falsehood, which have been exposed here upon this stand by witnesses; the word of a woman whose whole life shows that there is nothing in the shape of wrong, falsehood, or villainy, at which she would for one moment hesitate or scruple. And you have to corroborate that, absolutely nothing. The thing is in itself improbable. What man, what gentleman, ever recommended any woman to carry a pistol about with her in the streets of San Francisco? Why, gentlemen, if it was known that a lady did such a thing as to walk along the streets of San Francisco with a loaded pistol in her pocket, it would disgrace and degrade her at once. Why, it would not be reputable in a common prostitute to do it; and if one of that class should go armed about the public streets of San Francisco, she would be looked upon as one degraded beyond the most degraded. No lady carries a pistol; and no gentleman recommends to a lady to carry a pistol. It is not the practice among decent people, but it is the practice of lawless, desperate, God-abandoned, worthless, murderous women, and none others.

She gets the pistol and she goes down to the scene of action, and she watches and waits, and the bad passions are all kindled and aroused within her. She is reckless of consequences, to be sure. But that is not madness; it is intensified villainy. She watches deliberately for the approach of her victim, and she sees the husband and wife meet together. She hears the voice of the wife, and she sees the wife put her arm through that of her husband, and then she commits the murder.

In her testimony—and it must have sent through you, as it did through me, a thrill of horror—when giving an account of this transaction, she stated they came on board, and she heard Mrs. Crittenden speak; and then, she puts in: "It was

a very harsh and unpleasant voice." Criticising the voice of the woman whose husband she had murdered.

They come on board, they take their seats together, and there, in the presence of his wife, whom he had just met, in the presence of his young daughter—just as he reaches the family circle to which he was bound by every earthly tie—this woman, with the refinement of cruelty, which is the only refinement ever disclosed by her in the course of her life, so far as her correspondence reveals anything—and with a refinement of cruelty perfectly unexampled, commits this murder upon him.

I have endeavored to show you that the wicked, cruel, harsh disposition of the defendant and her character, as indicated by the evidence which has been presented before you, show most clearly that such was the nature of the woman, her antecedents and such her threats before their final execution, that any person connecting them together might very well have anticipated that final conclusion. There are however one or two circumstances to which I have not alluded and which I propose to present before you now.

On her cross-examination I asked her whether on a former occasion she did not attempt to shoot Mr. Crittenden. Her answer was she had never attempted anything of that kind, but that he had been there twice on one evening, and three times on another importuning to see her; that he had been denied admittance; that she finally came out and for the purpose of alarming him fired off a pistol. It was not denied that that pistol was fired directly down the stairs from where she was stationed, down toward the point which anybody would take in descending those stairs and attempting to leave the house. She said she merely fired the pistol for the purpose of preventing any further solicitation and importunity and in consequence of some threats that he had held out that he would be admitted. Did any one of you, gentlemen, ever hear of a lady starting out, pistol in hand, for any such purpose? Did you ever hear of a woman who loved a man above her life that sought to intimidate him by firing off pistols at random in the direction which he was, when it

was so dark she could not see him and did not know where he was? It is a new way of receiving a lover; it is a new way of manifesting affection. It is one of those peculiar idiosyncrasies that follow this defendant all the way through. She not only carries a pistol, loaded, about with her on the street; she not only changes it a few days before the assassination, because the one she has she does not think is a sufficiently good pistol; but she fires that pistol just as an angry woman who meant to kill a man would fire it—in the direction precisely a man would take and where it would be likely, if he was seeking to leave the house, it would kill him.

The gloss that has been attempted to be cast over this so-called love affair will not bear the light of day. You heard the evidence of Mrs. Crittenden; of that interview at the hotel in San Francisco; her description of the way in which that woman asked her for leave to kiss her hand, for she was the only woman who in ten years had uttered to her a single word of kindness. You might put one hundred witness upon the stand to prove a woman's bad character for chastity, or to prove her bad character in relation to any of those qualities which go to dignify and adorn a woman; but not all the words that could fall from their lips would present in as terse and eloquent a point of view, the true character of the woman with whom she was dealing, than have those few words: "You are the only woman who has said to me a word of kindness for the last ten years." How bad, how wicked, how depraved must that woman be who in ten long years has never heard a syllable in sympathy from one of her own sex! How few women there are in the world who can make this humiliating confession! A woman may be bad, she may have lost that which is the most precious jewel in woman's crown; she may have committed many faults and errors, but if there is yet one lingering remnant of the angel in her, she cannot thus lose the sympathy of her whole sex. That was no invention of Mrs. Crittenden; but with the bold and reckless audacity which has characterized this defense throughout, when she spoke those words she was met with the answer—"It is a lie!" Did you see the spiteful manner which char-

acterized that utterance? Did you see the dignified composure, that suppressed emotion, the dignified contempt, with which that utterance was received? Nothing in this trial has impressed me more strongly with the great contrast in the character of these two women, than the utterances of the one and of the other. A woman who in ten years has received no word of sympathy—how bad, how base, how utterly recreant to duty such a woman must be!

With regard to the character which has been given to her by a crowd of witnesses, it was not her connection with Mr. Crittenden that made her the subject of discussion and comment. After the unhappy connection had been formed many persons spoke of the infatuation of Mr. Crittenden in connection with the known character of the woman towards whom that infatuation existed; but before she had ever seen him, before she had ever known him, her public character, discussed generally—talked of in the community—was bad; it was infamous. I state as my experience and I think it will correspond with yours, that a truly virtuous, dignified, honorable woman never becomes the subject of general public slander. Her life refutes it; her conduct forbids it. There is dignity in true womanhood which never can be reached by the tongue of slander; and whenever you find a woman becoming the subject of general comment, whenever you find that she has lost the public respect and the public esteem, depend upon it, gentlemen, that she has not lost it without good cause. Were there any other evidences of her character wanting, would they not be found in her bold, defiant, unfeminine demeanor upon the stand? Would any woman who is not lost to all sense of shame and decency, when she saw the venerable widow of the man whom she had foully murdered, telling in faltering accents the sad tale of her wrongs, would any woman with one spark of true womanhood left in her breast, turn around to her and say: "It is a lie"?

I have in the course of my life been called upon to witness in Courts of justice and elsewhere, many scenes which were calculated to affect the heart and to produce the strongest

impression upon the mind, but never in my life did I feel so entirely affected as when that mourning woman upon the stand, in eloquence which I can not imitate and which no man can imitate, for it was the simple eloquence of nature speaking the honest truth from honest lips, when she described the interview in which this woman boldly put forth the proposition that she, the wife, the mother of his children, the head of his household, was an adultress, and she, the notorious wanton, was his true wife ordained of God! Gentlemen, I must say that a thrill passed through my heart on that occasion, as it did through yours, which I can not describe. And when that woman reiterated it upon the stand: "You get a divorce from him; I am his true wife; you are the adultress," did you not feel that human baseness and human infamy could go no further? What! Mr. Crittenden her husband! the husband of this woman, the wife of many husbands? The husband selected for her by the Almighty Creator of the Universe, who had sent her drifting through the world to marry four other men, and finally to discover her affinity!—the man selected by God at the hour of her birth for her husband! If there is blasphemy on earth, it is here.

Gentlemen, in these days we have many new theories put forth. It is said to be a progressive age, and it is so, and I hope it will continue so, so far as progress in wisdom, in learning, in the arts, in duties toward one another, shall go. But there are certain persons who dignify by the name of progress every vicious thought which vicious men and women may put forward for the utter destruction and debasement of society. That kind of progress I abhor.

I like the true, strong-minded woman. I love and reverence her—the woman of cultivated intellect, of a pure heart, of honest impulses; sensible of her duty to her husband, to her children, to all her relatives, and to mankind in general; the woman who walks in the paths of charity and kindness, who seeks to reclaim the fallen, who administers consolation to the sick, and the poor, and the afflicted; who, as the head of a household, sets a glorious example to her children growing

up around her; who, in the relations of wife, and mother, and sister, and daughter, and citizen, does all she can to make all around her happy, good, virtuous, and true; who exercises the blessed faculties which God has given her in this direction; who succors those who stand in need of succor; who is kind to the unfortunate; who, wherever she goes, and in whatever walk of life she is placed, carries blessings everywhere with her. These strong-minded women are the glory and crown of society. To them we owe—to their teachings, to their example all that is good and virtuous in us. To them we look for the correction of our errors and our faults. We admire, we adore, we venerate them. To this class belongs that unfortunate lady who was on the witness-stand before you, and who, in the spirit of truth, and honor, and uprightness, told you the sad story of her wrongs. She had borne much, she had suffered much; but with an undaunted heroism she had gone through all her troubles; she had sought to reclaim an erring husband; she had bent all the energies of her life to restore the happiness of that family circle.

There is another class of so-called strong-minded women, who have a mission to tame and subdue the brute man, to reduce him to absolute obedience and subjection; who are wiser than their generation; who think the ordinary humdrum relations of society are not adapted to their superior intellectuality; that these miserable common rules that would attach the husband to the wife, and which would impose upon earthly marriages certain obligations and certain duties—that these human laws are oppressive upon the other sex; that man is a kind of creature whose mission it is to trample upon woman; who never attend to their own business, but are always anxious to interfere in the business of others; who are not satisfied with any existing social relations, or any ordinarily accepted view of social rights and social duties; who have a “mission” upon earth to make themselves and everybody else miserable—a class of women who are always prating about domestic duties, but yet go about the streets with unclean petticoats and dirty stockings; a class of women who think it all right that every woman should seek her

“affinity”—that she may marry whom she pleases in the mean time—that that is a mere earthly arrangement; that she may have children by a half a dozen different husbands, and yet, when she finds or discovers her “affinity,” she has to leave the other half a dozen, and then she discovers that though she has already been married four times, she has a mission from heaven compelling her to marry some other woman’s husband, and that God Almighty has decreed that the man, though he has been married for twenty-five years, without any particular “mission” that he knew of, except to support and maintain and educate his children and advance them in knowledge and all that goes to dignify manhood and womanhood, has to abandon them; that she has a right to take that man from his wife and his children, and appropriate him to her own use, and live with him just so long as she thinks that marriage made in heaven lasts. She may change her mind; she may discover her mistake; the singular notion which led her to unite with this affinity may have passed away, and she may meet another man whom she discovers to be her affinity also, and *he* may have a wife and children. And so we may go on with this progressive doctrine of affinities, until we destroy all at once all the sanctity of the family relations, or peace, or comfort, or security of the husband and the wife, and the parent and the child—until you uproot the foundations of society, until you produce a perfect Pandemonium upon earth. And that is “progress.”

For that class of strong-minded women I have a feeling precisely the reverse of respect, admiration, or veneration. This defendant is a disciple of this monstrous theory. Her defense is based upon it.

She says he was her husband, that they were married in heaven—that they were married when they were born. Her counsel has come as near to it as he could without saying it. He has asserted that they loved each other with an undying affection and that she is the most sincere mourner in the world over the death, over the grave of the man she has murdered. He has endeavored to make you believe that the married man ought to have got a divorce from his wife in con-

sequence of his promise to this woman and that he was guilty of a breach of promise because he did not. He has endeavored to make you believe—though it was clothed under the plea of insanity—that when this man had, as she says, extorted a promise from the husband that he would receive his wife coldly, that the fact that he did not perform that promise, that the fact that he was decently civil to the woman with whom he had lived for over thirty years, was cause for that man's murder; that that is what produced that insanity; that it so shattered her brain that she became unconscious; that she unconsciously armed herself; that she unconsciously stationed herself so as to view the meeting, and that she unconsciously shot him to the heart and that she is innocent now, she being the one to prove her own insanity.

I have endeavored to present to you my theory in regard to the character of this woman. I have endeavored to show you that she is a bold, bad, vicious, malignant, passionate woman, whose whole heart was a perfect magazine of malice; that she had outraged this family for years; that she entertained the most deep and malignant hatred to a married woman simply because she was an honest and true wife; that she had endeavored and to a certain extent did, enslave the husband of that woman; and that when his better instincts rebelled against this false sovereignty she made up her mind that she would either rule or ruin and that failing to rule, she consummated her entire design by the commission of as cold-blooded, heartless, wicked, infamous a murder as stands upon the annals of history. Upon you now rests the responsibility. It is for you to determine whether a murder thus committed shall go unpunished. Whether any woman who takes a fancy to another woman's husband may drag him forth from his home or murder him if he refuses to go.

I have no fears as to the result. The whole community, the entire country is interested in the result of your deliberations, because there never has been in this, so far as I know, in any other country, put forward a defense so shameless, so disgraceful, so destitute of any element which can com-

mend it to the heart or the judgment of any honest man.

Gentlemen, I have endeavored to discharge my duty. That you will discharge yours I entertain no doubt, and that your verdict will be such as to sustain the purity, virtue and honor of this community, is to me no question of doubt. And so thinking and so believing, and so from my inmost heart, I submit this case, with confidence, to your decision.

MR. QUINT FOR THE PRISONER.

Gentlemen of the jury: What renders this case interesting and what is going to make it a leading case throughout all time, certainly the most important that has ever transpired in California if not in the United States, is the situation of these parties. The defendant is a woman accused of the murder of a leading member of the bar of San Francisco, a man who stood high and second to none in his profession. Her history has been given here; she is now I believe thirty-three years of age. She came to California in 1856 or 1857; she formed the acquaintance of Mr. Crittenden in the fall of 1863, a girl as it were, or if you please a woman but twenty-six years of age. At sixteen she was married in New Orleans. Not a word was ever uttered against her up to that time. She lived in peace and happiness with Mr. Stone, her first husband, for a period of one year. He died of cholera or some other fatal disease to which the climate of New Orleans subjects people there. This is paraded and arrayed against her, that she married Mr. Stone and that he only lived a year. Is that to be charged against her before you? If so I know of no misfortune in life, of no misfortune to which our Creator could subject us but what might in like manner be brought against any one of you should you have any difficulties hereafter which should be brought before a Court of Justice.

She then married Mr. Grayson and they say that she only lived with him a year before she parted with him, but she has testified to the reasons for that parting; that he became so intoxicated, such an inebriate, that it was utterly impossible for her longer to live with him.

She parted with him and came to California in 1856 or 1857. She commenced here to earn a livelihood for herself and for the support of her mother and a brother, then a mere boy, by teaching music. And notwithstanding the four corners of California have been scoured for witnesses and testimony to bring desrepute upon her character, not one breath has been uttered by a solitary witness against her character until after the death of Col. Fair. She resided here in San Francisco and earned her livelihood by teaching music. Was that not honest? Was it not proper and right? If there had been any weakness in her character or any opportunity

to prove aught against her at that time, do you think they would not have done it, when men are now living who knew her then and who were at that period and ever since have been her acquaintances? Without question they would, where there has been such vindictiveness manifested as there has been shown in this case.

Having lived here in this community and maintained and supported herself for a period of two years, in 1859 she met and married Col. Fair, a gentleman whom I believe she had met once in New Orleans. They moved to Yreka and lived there for a while; finally they came down here; he died here; they lived together happily until the day of his death. That Col. Fair killed himself is arraigned against her character; it is brought up now in judgment against her. What evidence have you that she was not to Col. Fair one of the most affectionate, kind and loving wives that ever had a husband? There is not one single scintilla of evidence that would warrant you in coming to any other conclusion.

With all the industry that could be exercised, with detectives upon the track of every witness, the prosecution have not yet been able to find one solitary person who would come forward and say that Col. Fair and Mrs. Fair lived otherwise than happily together; yet there was a question put by Judge Campbell which was cruel in the extreme. He asked, "Did not you in the presence of a lady, a Mrs. Johnson, draw a pistol and threaten to shoot Col. Fair?" She promptly said, "No, never." Had the counsel a right to put such a question as that unless he was fortified with the proof behind it? What would naturally be her belief when such a question was put? Of course that the party putting the question was prepared with proof to meet it. Why should a witness be thus interrogated with a reference to assault upon one now lying in his grave and confronted too by the name of a witness, the inference being, of course, that that witness was present at the time the assault was made? During all the intercourse between Mrs. Fair, the defendant and her husband, Col. Fair, the evidence fails to disclose that they ever lived otherwise than happily or that she was anything but a pure, virtuous, loving and devoted wife to him.

Then, gentlemen, he died; this was her third husband and up to the time of Col. Fair's death not one word, not one breath, is proved against her character. Up to the time that she went to Virginia she has been a woman that has always by honest effort earned for herself a livelihood and support. If she had been that kind of a character as they would stigmatize her as being—a young woman twenty-four or twenty-five years of age, beautiful as they admit—would it have been necessary for her to have made those superhuman exertions in order to support herself? You and I and everyone knows who has resided for any length of time in California, that she needed to have made no such exertions to have gained a livelihood. She would have found plenty of such men as Mr. Crittenden—men of wealth and influence—who would have supported her without any exertion on her part in the way she did exert herself. We of California know that too well and it can not

be gainsaid. But instead of resorting to that kind of life which women of bad repute lead, she pursued an honest calling and was honestly industrious. First she taught music, then she took a lodging and boarding-house, keeping it in proper repute. There has not been a single witness who testified that any house she has ever kept, no matter how humble it may have been or how aristocratic it may have been—was not reputable. No witness has said that the Tahoe House which she kept in Virginia City was a house of bad repute, or so considered in that community. No one has said that the lodging house she kept in Sacramento was a house of bad repute. Not one person has said that any house she kept in San Francisco or any house which she kept elsewhere was otherwise than a house of good repute, nor that it was not beyond assail.

There have been several witnesses here who were residents of Sacramento at the time she resided there, called to testify with reference to her character. Gen. Hutchinson was one, he kept a hotel there; and he was Mayor of that city, he knew her there. And there was Mr. Doyle who kept a saloon in Virginia City, he knew her in Sacramento while she was there, and yet neither of those men testified anything against her reputation in Sacramento. All those who have testified in regard to her reputation at all—when we come down to what it really amounts to, tell you that these reports have and had their origin with her association and connections with Mr. Crittenden and not elsewhere.

In 1863 she opened the Tahoe House containing thirty-seven rooms; she states to you how she furnished it; she had a diamond ring, the gift of Col. Fair, with that she raised some money; she had a little money which she took there. She raised it by playing three times on the stage. If there is anything criminal in that I would like to know where the criminality exists. In about a year after opening the Tahoe House she formed the acquaintance of Mr. Crittenden. Very shortly after she became his affianced. She did not know he was a married man, but within a year she did. He then made her some excuse that he and his wife were not living together; it matters not so far as Mr. Crittenden is concerned whether he informed her he was married or not married at the time these relations first commenced. I shall show you by the correspondence certainly so far as he was concerned he can claim no immunity from the fact that he was a married man. For up to the time she formed this acquaintance and alliance with Mr. Crittenden her life was a paradise with what it has been since that period of time. Anxiety, such, gentlemen, as you never before saw portrayed by the human mind or character, has been harrowing the soul and feelings of the accused, from the time she first ascertained that he was a married man and could not for that reason fulfill the contract which she says he made with her of marriage.

It is proper in this connection that you should consider the character of Mr. Crittenden and his reputation in the community in which he lived. Woman is delicate in her organization and ordinarily, intellectually, subject to the control of the stronger—the

masculine mind. When woman is brought under the control and subject to the will of man—if that man is a man of intellect, of intellectual powers and ability—he can and will control the destiny of the woman thus brought under his control.

Gentlemen, I ask you, throughout the consideration of this case never for one moment to lose sight of the character of this great man—for all admit him to have been a great man, intellectually and socially and every way; never for a moment to forget the contrast between these two parties; A. P. Crittenden the deceased, that great mind, that giant intellect and this poor, feeble woman who was his victim. Let me read from some of Mr. Crittenden's letters. Here is one, this great mind operating upon this woman, the mind of this great man bringing this influence and this control upon the mind of this woman:

"Instantly, *instantly*, upon the receipt of this without the loss of one single second, telegraph me 'yes' or 'no' if you would not have my life upon your soul." What do you think of that, gentlemen? "If you would not have my life upon your soul—telegraph me instantly—*instantly*—'yes' or 'no.'" Think of it, pause and consider it: "If you would not have my life upon your soul; if 'yes' it will mean that we are parted for ever, if 'no' that you do not mean what you have said, that you do and always will love me; that you are mine forever."

What did he speak of there? Why, she tells him here in this letter, "We are going to separate. From this time we can be no more to each other." Immediately upon the receipt of that he sits down and writes the words which I have read to you and he sent this letter to her demanding that if she would not have his life upon her soul to telegraph him immediately retracting that letter. But if she meant what she said in her letter—that they were separated forever—then his life would be at an end. And I suppose that if she had not replied in the negative she would have been charged with his murder. Oh, yes, the uncharitable world would have said so. They would have said that he, being a married man, because she was trying to break the shackles of the love he bore her and leave him free to return to his marital duties, to his wife and family; if he had slain himself then, it would have been said she was the cause of his death; the uncharitable world would have said so and the prosecution would have said so.

Gentlemen, here is the letter which called forth the one from Mr. Crittenden which I read; the letter was indorsed, "Did not mean it." These are the very words which he demanded she should telegraph him and telegraph instantly. Then, gentlemen, here are some others:

"I must see you tonight; say yes and let me come. I cannot wait. This night is perfectly decisive of our fate. It is now or never. If you don't see me tonight we shall never meet again on earth."

In these letters you see the strong, passionate feeling of the love of this man and his ardent expressions of that love, and the power

which his giant intellect exercised over this woman even when she was the wife of another man.

(After discussing the Grayson and the Snyder marriage there were then read a number of Mr. Crittenden's letters.)

This last letter concludes, gentlemen: "Put that old fellow to your face and let him kiss your eyes for me." Now, I do not ask for any merriment upon this, but these are expressions which Mr. Crittenden himself writes to the defendant; a matter of serious, calm consideration for this jury when they come to ascertain and determine in their own minds the relations existing between these parties.

In this last letter he speaks as if he did not intend to leave her for a week and even then, even for this temporary absence, if he could have foreseen that she could not join him there, there was not money enough, he says, in the Bank of California in San Francisco to have paid him for that limited separation. Tell me there was no love there! That there was no feeling there! Pure and unadulterated feelings and love! It may have been wrong, it may have been an illegitimate love, but it still speaks the impassioned feelings of the heart.

April 19.

Early in 1869 he writes: "I am sitting in our parlor where it first dawned upon me that I loved you, where it first dawned upon us that we loved each other, where I gave you the first kiss." He says then that he is gazing up and looking at her picture wishing that the original was there that he might hug her to his bosom and kiss the original instead of the picture. Again he writes: "Telegraph, telegraph me immediately upon the receipt of this, yes or no unless you would have my life upon your soul." And here is a letter from her: "Now, Mr. Crittenden we must part until you place yourself in a position to make me your wife. I will see you once and a while at your rooms, but other than that we must part so that the world at least, cannot have it to say that I am living with you as they have heretofore; because, you see, here is my little child; for her I live and I cannot blast her future prospects in life by this course of conduct. And whenever you, Mr. Crittenden, are ready and prepared to fulfill your promises on your part and procure the divorce which you have agreed to do, then I shall be most happy even in poverty. Without money or anything I am willing to go with you anywhere, into any wilderness with you, so that you are mine and I am yours. You will then place me in that position which I ought to occupy from our heretofore existing relations."

Upon the point of motive and intent I propose now to cite some authorities.

(He here cited *People v. Foren*, 25 Cal. 36; *Strong v. Shumaker*, 3 Barb. 650; *The William Grey*, 1 Paine, 21.)

The question is, what constitutes guilt and unless the mind was guilty the man was not guilty.

I remember a case that occurred some two years ago in Tuolumne

county. A Mr. Cooper in 1856 married a young lady in the town of Sonora. They moved away some few miles and always, so far as the neighbors knew, and everybody who knew them, lived happily, pleasantly and agreeably together. They had some two or three children. About two years ago, one morning, in a fit of frenzy, produced by some reason unknown to any of his neighbors, or anybody else, with a knife he slew his wife, and undertook to kill his children. But the interference of a Chinaman he had there, prevented that; and, happily, their lives were spared. He fled, and for two or three days was not found. At last he was discovered and arrested. He was taken to the asylum, at Stockton, and remained there some four or five months; and ultimately was released, cured, entirely cured; and he is now at home with those little children, engaged in industrial pursuits, as rational as any man in the community. No indictment was ever found against him, no trial was ever had in the case. And why? Because the community in which he lived knew, from his relations with his wife and family, that there was no guilty mind there.

(Mr. Quint here cited and read from the leading English and American cases on Insanity, including the trials of Sickles, Cole and Richardson).

If a man can be wrought up to a state of frenzy under circumstances like those which brought frenzy to the minds of Sickles, Cole and McFarland, so as to render him an irresponsible agent, I would like to know why a poor woman might not under similar circumstances be wrought up to the same degree of frenzy, and thereby cease to become a responsible agent? Man's mind is different from the mind of woman; it is stronger, not liable to the impulses of the moment as woman's is. There is that distinction between them.

I need not stop here, either. It is but a little while since we had a case right here in our midst. My learned friend, Judge Campbell here, was the counsel who defended the case. I refer to *The People v. Gunn*. Gunn killed Murphy, because Murphy, as Gunn had been informed, had seduced his sister. He armed himself upon learning the fact and went out and deliberately wounded Murphy, from the effect of which he died. What was the defense? Why, that Gunn was insane. He never has been in the Insane Asylum, there is no proof that he ever was insane in his life, and there was no attempt to make any such proof at all. He was tried and acquitted, upon the ground that his mind was in that condition at the time he fired the fatal shot, that he was not an accountable agent.

A few more words and I shall have done. The law, in its cold commands, prohibits the indulgence of the passion of anger. In its tender consideration for the safety of the human *physical* frame, the law forbids man to strike his fellow man. Men are punishable by the law if they assail the bodies of their fellow men. Life for

life is the fearful decree of our legislative powers. This sentence of the written law, as construed and administered by wise Judges, and maintained by zealous public prosecutors, is that when human life has been sacrificed by the pistol or the dagger, the law will administer punishment, and take another life to appease the offended majesty of the written law. Are there no avenues to the seat of life save through the body? If the truth were known—if the dead could speak—if graves could yield up their secrets to the astonished world—you would learn that numberless deaths, unhallowed numbers, could be counted against those who have sapped the foundations of life by assaults upon its *moral* support, in the proportion of a hundred to one of assaults upon the body.

When the black flowing rivers render up the "rashly importunate" who have "gone to their death," our *vigilant* law does not look beyond the "fair auburn tresses escaped from the comb" to find the heartless author of a crime which has caused the loss of her life.

The wretch whose lust has destroyed the moral support of his victim's life, passes carelessly by the pall upon which his murdered victim is borne to her rest, and seeks fresh fields in which to exert his deadly power. He may be, and often is known, but no *law* restrains his murderous hand. Hecatombs have been sacrificed by these moral murderers, and the armed majesty of the law is not moved. Where shall be woman's defenders? Who shall save woman from her murderers? Without a father, a husband or brother to defend her, shall not a wronged and sacrificed woman be her own defender? When the moral support of life is destroyed, when each pulsation tingles at the heart with a sense of betrayal, ruin and shame, who will then seize upon the mysterious workings of the brain and guide the mind to discreet conclusions? The human heart is formed for love. This great man, whose loss we all mourn, and whose fall has occasioned this protracted and serious trial, could forsake the endearments of home and all its charms and soothing influences, and with a zeal and eloquence which charmed and entranced assemblies of men—and, if your Honor please, in this Court room, his skill in debate, his exalted and profound learning have moved the judicial mind and crowned himself with the laurels of success. To juries in your place he has addressed his matchless and persuasive eloquence. To jurors, honest and conscientious as yourself, he has made the worse appear the better cause. Juries and Judges have yielded their wills to his persuasive appeals. Rapt in admiration, strong men in the Court room have drifted with his argument to the conclusions which he sought. This is known to us all. Then, gentlemen, is it wonderful, is it strange, that he could enrapture this poor woman with stories of his love until the morning sun was not more welcome than his pleasant face? But if she dared to aspire to his love, if her heart beat wildly in her bosom when his familiar step was heard upon her stairs, she was all to blame! The man who taught her to love him was free from fault! She alone must suffer. In the name of God, I ask you, has she not already suffered enough? Her soul

was tortured until reason, flickering on its frenzied throne, deserted her. The mad, wild tumult in her brain overcame the appreciation of right and wrong. The shadows which her anxiety had cast upon her intelligence were at length drawn out until the scintillations of reason were obscured in the dark night of despair. The man she loved, the being to whom she had surrendered her body and soul, was in the obscurity of that hour—in the darkness of that moment when that fatal shot was fired—hurried across that mysterious water which all are doomed to pass, and which she, in her wild imagination, saw vividly portrayed, as we find in the testimony of Mrs. Morris. In her wild imagining a little while she stood upon the marshy shore, and imploringly stretched out her hands for aid to reach him. Even then his smiles of love encouraged her to hope, but the grim tyrant Despair held her spell-bound and beyond the embrace of her idol.

The dark water is still between them. But it is manifest that the shock to her soul is rapidly hurrying her to "that undiscovered country from whose bourne no traveller has returned." In the course of nature her days are to be few and full of sorrow. As she glides down the slippery steps of life, shall we not cheer her lonely and sorrow-laden heart with kindness? Are we so little in our souls that we can not afford to be charitable in such a case? Man's opportunities for doing good are not so vast that he need to refuse their presence. When, in future years, if our lives be prolonged, we should seek relief from the cares and the toils of existence, when we would pour balm upon our own bleeding hearts, when we would seek solace for life's griefs, remember there will be no more pleasant recollections in the history of our lives than that, when a poor and friendless woman casts her heart, her hopes, her life, into our hands, we administered balm to her distressed soul and poured upon her our blessings and yielded to her man's warm instincts for mankind.

April 20.

Mr. Cook: We claim that under the statute of the State applicable to trials of this character where there are two counsel upon a side, the arguments must be delivered to the Court and jury alternately; and that being the case and Judge Campbell having opened and Mr. Quint followed him, the District Attorney shall follow Mr. Quint and then I shall follow and close the argument. It was evidently the intention of the legislature that, in murder cases, there should be an exception to the general rule that the prosecution should close; and they have therefore provided that the argument should take this course.

THE COURT: The point has been raised in several of the Courts of this State, and it has been universally decided that the prosecution should close. If you read the two sections together, as it now stands, in connection with the law as it stood prior to 1855—in connection with the statute referred to—it is very evident to my mind that the legislature intended to change the rule then existing—the rule then being that the defendant should close in all crim-

inal cases. That has been the understanding of all Judges since 1855, and, as I am informed, has been the uniform ruling in all cases in regard to it.

Mr. Cook: We claim first, that it is the duty of the prosecution now to make their argument to the jury and that I might then have a right to follow and make my argument, and that mine shall be the conclusion. In view of your Honor's construction of the statute almost immediately preceding the one referred to, that merely provides that after the testimony is closed, unless there is a stipulation to submit it without argument, "the prosecution *must* open and *may* close." That word "must" is used also in this section—"that the argument shall proceed alternately," and after that has been done, then, if that section is applicable to the section I speak of, then the District Attorney may have the right to close.

THE COURT: I will let the District Attorney, at your request, go on, if he pleases, and make an argument, or I will permit him to waive that argument.

Mr. Cook: That I shall except to also. The spirit of the statute must be carried out or your Honor is right that he has a right to make a closing argument, after my argument.

THE COURT: It should be stated that the word "may," according to the construction of statutes given by the Supreme Court, means "shall," so that the statute would require that the District Attorney shall close.

Mr. Cook: The Legislature there again say that he must open—they use that word. They say when there are two counsel they *must* speak alternately, and they say *must* in connection with *may*, also in this.

THE COURT: The prosecution can go on now, if you desire, but they have undoubtedly the right to close.

Mr. Byrne: I will not go on now, and I desire to say that this statute has been passed upon repeatedly, to my personal knowledge.

MR. COOK FOR THE PRISONER.

Gentlemen, what is the nature of this case? Who are the prominent actors and parties who have been daily, by the evidence, introduced here and portrayed before you? what are, and what have been, their relations? If a stranger should drop into this court room this moment, he would wonder, and as he listened, still wonder, how it is, how it could be, that a woman of refined manner, a woman of education, a woman who has a dear and darling daughter to live for and cherish, should, without any motive, without any cause whatever, have stricken to the heart and slain the only protector which God had left her on the face of the earth. I say the

wonder would grow, and still would grow, until he had heard the story of her wrongs and her sufferings—until he had followed her through a course of seven or eight years, and found that that once bright and brilliant intellect—that once lovable creature—degree by degree was sinking from a high and elevated tone to almost the position of a confirmed lunatic.

As far back as the year 1863, in a mining town in Nevada, the defendant was struggling to gain an honest living for herself and daughter. With all her personal attractions, notwithstanding her accomplishments to teach music in almost every form, her idea was to go to a new world where she can accumulate a sufficiency, and lay it in store for her after years, and for the support of herself and daughter, and her mother. Gentlemen, it was an evil hour; it was a terrible day that she determined to cross the mountains; it was a terrible moment. It was the signal of her dishonor, to her downfall, to her ruin! She met the man who at once unquestionably became fascinated by her appearance and accomplishments. He at once selected a suite of rooms directly opposite hers, on the same floor of her house. He at once addressed himself to her with all his winning eloquence, with all his, at that moment, undoubtedly deceitful smiles. He continued day by day, night by night, until he had so entwined himself and wound himself about this frail stem, that she had promised to marry him. A. P. Crittenden was one of the brightest intellects in your community, the leader of his profession—that great and noble profession which calls out the talent of the world; the leader of the Bar upon the Pacific Coast; the man that could control Courts and bend the minds of jurors at his will; who held all who listened to him in a trance; who placed you in a state of mesmerism while listening to his eloquent appeals. In addition to this, he was a tyrant—indomitable, persevering, unflinching; never yielding what he undertook. Such is the character of the slain; such is the character of the man who wormed himself about the defendant and into her affections, until he had her under his control, until she really loved him.

Two bright intellects met, and when he ascertained she was a woman of intellect, as well as prepossessing in appearance, what he intended first as lust was turned to love, and he became soon the admirer—the lover—following every act and movement of the prisoner at the bar. He forgot his own social relations; forgot that he had a wife and children dependent on him; forgot that he was the father of seven living children, and the grandfather of many children. All these things he passed by like the idle wind, and turned his devotion, his love, with all the endearing remarks and insinuations, not only by word of mouth, but in his every letter, into the ears and mind of his prisoner, holding out to her—whether he was sincere or not is for you to say—but certain it is that he told her that he did live unhappily with his family, with his wife—that he would procure a divorce from her, and that the time should come when she should be his lawful wife. This is no fancy sketch, no fancy picture of the imagination. These are the great, bold, broad, unquestionable facts of this case. They stand here without being questioned—truths, mighty truths. Counsel forgot when he made this uncalled for, unprecedented, and unwarranted attack upon Mrs. Fair, that the man she slew, if she were guilty, was guilty in a tenfold degree. Old enough to be her father, with a wife old enough to be her mother, children of her age; with all these relations surrounding him and binding him to duty, I ask whether he is not the man who has violated every principle of morals—whether he was not the man who defied public opinion, who made no secret of his actions—a man who frequented public restaurants in company with the defendant, and dined in open day in their public saloons with her; a man who walked the streets of San Francisco with the defendant—I say he was the man who set public opinion, which the counsel has so frequently adverted to here, at defiance, and said: “I set up a code of morals of my own. I care not what my neighbor thinks.”

The speech of Judge Campbell upon the character of the defendant was not only uncalled-for, but it was vindictive. Never before, when a human being was upon trial for his

life, particularly a female with her mouth closed, has a prosecuting attorney made such an attack, uncalled-for and unwarranted by the evidence—as he did upon the unfortunate prisoner. He talked about Dr. Lyford coming here with a dictionary of big words. I will ask the learned counsel where he found his dictionary for his harsh epithets? Many of them can not be found in an English dictionary—many of them are only by-words upon the street. And yet she was compelled to sit here with her mouth closed and listen to this harangue—I will not call it an argument.

Gentlemen, Mr. Campbell has selected out of three or four hundred letters, some twelve or fifteen letters, passing through an acquaintance of some six or seven years—and those are all he could find—in which he found some harsh expressions, and those were the subject of his comment. He told you—and he offered to introduce evidence on her general reputation—he should show that she was notoriously a bad woman—a woman who was utterly debased, whose chastity was so far gone, so demoralized, that it was a by-word in the community—that it was a general reputation, known by everybody where she lived.

Gentlemen, there would be one answer to it if they had established anything like that and that is this: Do you believe that if she had a bad reputation for chastity in the community that A. P. Crittenden would have endorsed her character by taking her, not only to one of the most respectable and public hotels in San Francisco but seating her at the dinner-table beside his wife and daughter? Crittenden is dead and in his grave; his voice cannot be heard here, but there is his act speaking louder than he could if upon the witness-stand, which tells you that he believed her up to the time of these relations with her, to be a virtuous woman. And that act gives the lie to all these slanderous tales about which the counsel has harped so much.

Judge Campbell assailed defendant's character, and what did he do beyond that? He said that Dr. Lyford was a mountebank, that Dr. Trask had forgotten what he knew. He doesn't say that the doctor lied; he is too well known in

this community. Dr. Tucker he jumps over and Dr. Dean he almost forgets. To the nurse he gives a passing glance and says things of that kind may occur with almost any female; and there is his argument upon the most vital question in this case. That is the kind of argument by which he appeals to your human understanding for the purpose of securing the conviction of this lady. To sum up Judge Campbell's speech, it was an attack upon the character of the defendant, an attempt to show that she had told one or two falsehoods and that her object was money. He jumped entirely over the medical testimony and all the testimony as to her actions and behavior when she was arrested.

That, gentlemen of the jury, is the whole sum and substance of his speech. I propose to show you, first, that this question of reputation has no applicability and has nothing to do with the matter here for your consideration. It would be immaterial whether the defendant were the lowest wretch on the face of the earth or the queen of an empire. Judge Campbell has tried to bring your mind into a condition to try the defendant for every act of her life instead of trying her for shooting Mr. Crittenden. His object was to divert your attention from the truth; to get you out of the proper road of inquiry; to carry you off on a question which is entirely foreign to this case, and was only made use of because it was a matter upon which he could vent to his eloquence, in discussing the morality of the community, what it should be and what it should not be and to tickle the ears of a few of his hearers.

Gentlemen of the jury, you have but one question to decide, that is, the condition of the mind of the accused at the very instant the fatal shot was fired.

The prosecution's first point was that the defendant stated a falsehood when she said she knew Mr. Crittenden about a year before she knew he had a wife living. First you have her testimony on this subject. What motive had she for telling you an untruth about that? It would not help her case whether she knew he was married or unmarried. She says she first met him in September, 1863; she then had the

Tahoe House. He was introduced to her and took rooms there. Mrs. Crittenden tells you that Mr. Crittenden did not go over to Virginia to live and go into business there until February 1864; that they went to Aurora on the 4th of February 1864. Mrs. Fair testifies that Mr. Crittenden came there in September 1863. All but three of the witnesses called for the prosecution on the question of the character of the defendant, stated that Mr. Crittenden was there in Virginia City and in business with Judge Sunderland in the fall of 1863. Indeed they all testify to it and corroborate Mrs. Fair. Now, who is right? Mrs. Fair undoubtedly knows when she opened the Tahoe House.

There were five months when it is certain that Mrs. Crittenden was not present. There were four months that Mrs. Crittenden was there—that was from February to June. Mrs. Fair was at that time under contract of marriage with Mr. Crittenden. Mr. Crittenden having his wife there would use every means in his power to keep that fact from Mrs. Fair. If he had any friends at the Tahoe House he would be sure to tell them not to mention it to Mrs. Fair. Mrs. Fair was confined to her own house in which she kept lodgers—a class of people that she was not thrown into communication with at all. Even if they knew that Mrs. Crittenden was in town her relations with them were such as not to have elicited such information from anybody in the house. They come and go out and they go to bed from 9 to 10 or 11 or even 12 o'clock, and getting up in the morning and going out to a restaurant and getting their meals—who believes or imagines that it was likely she should have obtained this intelligence from such persons?

Mrs. Crittenden says she was in the street with her husband. She does not tell us whether it was in the night time or in the daytime; whether it was once or twice. That is all she says about it. Mrs. Fair says that after her mother learned that Mr. Crittenden had a wife living, she called Mr. Crittenden to an account when the three were present. What was the use of her inventing that story? Why not stand by the single fact that she had already stated, that she did not

know he had a wife living? After her mother had ascertained the fact that he had a wife living, what did she do? She called an interview of the three and said to Mr. Crittenden, "Sir, you cannot remain in this house until you divest yourself of your wife and put yourself in a position in which you can visit my daughter." What does he do? In that commanding, dictatorial mood of his, to which she always yielded, he says, "I will leave your house but I will take your daughter with me." And what did they do? They did leave the house, she did go with him; she went to the house on A street fitted up for the same business. It was only a small house, three or four rooms and Mr. Crittenden took rooms there. Here are facts corroborating her; facts, not imaginings—not theories. Would Mrs. Fair, except for some such cause as that, have given up a house which was paying her well, in which she was doing a lucrative business, every room of the Tahoe House full? Have you not got a reason—the only reason that can suggest itself to you—that her mother said that Crittenden should not visit her at that house and rather than have a quarrel with her mother, she said, "Mother, you keep this house and I will go to my own." She went to her own house and Mr. Crittenden went with her and took rooms there. There she also had three lodgers besides Mr. Crittenden. She was not abandoning her business but trying to make a little money honestly yet. Is she the profligate? Is she the prostitute? Is she living upon Mr. Crittenden?

Then he took her to San Francisco. Gentlemen, the man was so infatuated that he could not at that time allow this woman to be out of his sight. She did not want to go to the hotel where his wife was, but he insisted. Why did he take her there? To satisfy her that he did not have at that time relations with his wife beyond what he had told her, namely, taking his meals there. She was then introduced to Mrs. Crittenden by Mr. Crittenden. Up to this time and up to the summer of 1865 had not Mr. Crittenden with all his shrewdness concealed everything from his wife? Up to the summer of 1865, the time Mrs. Crittenden says she went up to Virginia and stopped with Mr. Crittenden at Mrs. Fair's

house on A street. She says she had a conversation with Mrs. Fair when Mrs. Fair called her out of the room in her night clothes and had a talk with her. Up to that time she did not know that Mr. Crittenden was having improper relations with Mrs. Fair. Mrs. Crittenden having been there during the summer, in Virginia three times and Mrs. Crittenden having a daughter permanently residing there, Mr. Crittenden had tact and cunning sufficient to keep from his wife the fact of his relations with Mrs. Fair for those two years and upward. Yet the fact that Mrs. Fair was kept in ignorance of the fact that Mrs. Crittenden was up there for three months, is announced as a mystery here. She visited there three times during the summer; she had a married daughter permanently living there and yet she (Mrs. Crittenden) never heard a word about the fact of her husband's relations with Mrs. Fair. Let me ask you if it does not come with a bad grace from the counsel on the other side to argue that the fact that Mrs. Crittenden was there three or four months, must necessarily have been known to Mrs. Fair.

Again Mrs. Fair tells you that Mr. Crittenden, all the time that Mrs. Crittenden was there, occupied that suit of rooms in her house, he never gave them up, they were there for him whether he used them or not. Why, if Mr. Crittenden was there, as Mrs. Crittenden said, during that time stopping with her at her daughter's in Virginia City, he was disguising the fact from Mrs. Fair and fooling her all the time. Because the bed would be tumbled—mussed. No doubt he was there, as Mrs. Crittenden says, and was with her during that time but he occupied his rooms and kept up the disguise and kept Mrs. Fair in the belief all the time that he was occupying his rooms at her house.

Mr. Crittenden when they came to San Francisco told Mrs. Fair that he had rooms on Pine street. The night she went up to his house she started out first toward Pine street supposing he would go in that direction, but she found he did not. She followed him, he took a different direction. She thought it was strange until she brought up in front of his residence which she did not know before that he occupied.

Would not the letters which you have heard read here, of themselves, justify her in believing that he was truthful to her when he said he did not sleep with his family? Take those letters themselves: "You are my own idol;" "The idol of my soul;" "The only one I love and cherish upon earth;" "Life, air, heaven—all;" "Without you I can not survive for an instant;" "Answer my letter by telegraph, instantly, 'yes or no'—on that hangs my fate, on it depends my earthly existence." Should she place confidence in the words of a man who writes thus? Should she believe him when he tells her that he is not sleeping with his wife—that it was a separation, and that he takes his meals there for the purpose of avoiding criticism in the community in which he lives? Could she do less than to believe this man, who had overpowered her mind—who had her so completely under his control and within his grasp? Poor, frail humanity could not withstand such words as these. Poor woman! the weaker sex must yield when a great, overpowering mind like this once gets full possession of her soul and body. His every thought was hers; she believed in him; she lived for him; his breath was her breath. What he said she believed; she gave it the greatest verity that woman could give to anything here on earth; and yet she is to be denounced here by counsel as a liar, for having placed faith and confidence in the man whose position toward her was such as that. It does not fall from her lips alone, but is taken from his own pen when writing to her—not once, not twice, not three times, but time and time again, through a series of years, and always expressing that one great principle, that one great feeling of his mind—"love, affection, eternal love, and nothing but love for you."

There is another circumstance to establish, that he was sleeping separate and apart from his family and also that Mrs. Fair did not know that Mrs. Crittenden was in Virginia City from February until June. It is this fact, that Mrs. Crittenden herself testifies that during that time she did not know Mrs. Fair. I asked her if she had been in the Tahoe House, she said no, she had been in a store under it. She did not know Mrs. Fair during her visit in Virginia City in June,

1864; she did not know her down to 1865. You will bear in mind that she was there until the last part of June, 1864. And if Mrs. Fair had known that Mrs. Crittenden was there and that Mr. Crittenden had a wife in Virginia City, in the name of heaven, why did not Mr. Crittenden then introduce her? Why wait two months and then take her down to San Francisco to a public hotel and introduce them? That gives the sequel to the whole thing. Mrs. Fair did not discover the fact until after Mrs. Crittenden had left there in June. It had been kept from her and that is why they were not introduced in Virginia City. After Mr. Crittenden left Virginia in June, in the August following, nearly two months after, Mr. Crittenden and Mrs. Fair went down to the Occidental Hotel and they were introduced.

She had ascertained that he had a wife living, and because she was going to San Francisco, Mr. Crittenden, with his usual tact and cunning, said to himself, "I will take her myself to the Occidental Hotel, and will introduce her to my wife, and when the people at the Occidental Hotel see us together, although there may have been talk in Virginia City about our improper relations, they will at once say that our relations have not been improper, and it will take away talk that has been going on about her and me; I will satisfy my family that there are no improper relations existing between us by taking her right there and introducing her as a respectable woman." Gentlemen, if this kind of evidence, together with the letters which have corroborated Mrs. Fair in everything she has stated, do not satisfy you she is telling the truth, though Mr. Crittenden should rise from his grave and be put upon the witness stand and declare it, you would not believe it.

What do the counsel on the other side say upon this subject? They have introduced a letter written by Mrs. Fair to Mr. Crittenden, in which she says, "You are lying or sleeping by the side of a woman." Is that strange? Is there anything peculiar in that, when you take his taunting letters to her? She merely showed by that letter the feelings that were revolving in her mind and the misgivings she had as to

whether Mr. Crittenden was really secretly keeping the vow he had made to her or whether he was breaking it.

Mrs. Crittenden after being introduced to Mrs. Fair did not return to Virginia until the following January and at that time Mrs. Fair herself—this cunning, artful, deceitful, intriguing woman, this woman who was trying to steal another woman's husband from her, trying to break up a family; this woman who had concealed everything from Mrs. Crittenden, called Mrs. Crittenden to her room at midnight and told her that she loved her husband. Do you really believe that a conversation of that kind would have occurred unless Mrs. Fair was acting on what Mr. Crittenden had told her—that they did not live happily together and that he intended to get a divorce? We have this from Mrs. Crittenden herself, that Mrs. Fair went to her and frankly and squarely told her feelings for her husband—her love, that she did love him. That goes again to carry conviction to the human mind that Mrs. Fair had been telling the truth all through. She had told Mr. Crittenden that she would not remain in that suspense any longer and she intended to tell his wife all. What did she call her in for? Why, gentlemen, Mr. Crittenden had been for seven or eight days occupying—so far as outside appearance was concerned—a room with his wife. She said to Mr. Crittenden, "I intend to divulge the whole thing; your wife is here and she shall know what has brought it about." Mr. Crittenden says to her, "Don't do it; if you ever divulge our relations with one another to her I will blow my brains out." Mrs. Crittenden came into the room and Mr. Crittenden came to the door. Mrs. Crittenden then said, "Mrs. Fair wished to see me privately, not you." Mrs. Crittenden takes a seat, with her back towards the open door, Mr. Crittenden stands by the door, and holds up a pistol pointed at his head, as much as to say, "If you divulge what you said you would, this will be the end of me." And then what did Mrs. Fair do? She made up the best story that she could to Mrs. Crittenden, for fear that if she did tell her what she had threatened to tell, and what she intended to divulge, he would kill himself. And she did then tell the story

about a young lawyer, with whom she had an engagement, which had been broken off. Do not these facts, facts not disputed, carry conviction to your minds that Mrs. Fair really believed, or that at least she tried to believe, that Mr. Crittenden was keeping his word and promise with her, and that then, for the first time, she was determined, and announced her determination, to let the thing out and have the whole thing dropped?

Now, in regard to that furniture. I am not here to-day as an advocate of the conduct of Mr. Crittenden or Mrs. Fair, in a moral point of view, or that their relations were correct and proper. Judge Campbell can go no further than I will in denouncing anything and everything that in any manner interferes with the marital relations of parties, or that is a full breach of the obligations of life, as viewed by the community in which we live. It is an unfortunate position in which this prisoner was found, in which she had been placed through the artful designs and cunning of Mr. Crittenden. It was a position that she was dragged into inch by inch, until she became so firmly fixed that she could not escape from it. When she attempted to escape, he put his clutches on her stronger. Is it strange, then, that after this promise to marry, after he had made all the promises he had, that he intended to divorce his wife, that they never were happy together—is it not the working of human nature that when she found it was an artful dodge of Crittenden's to get her to leave there, knowing that his wife intended to visit him and she, ascertaining the fact that Mrs. Crittenden was taking the furniture out of the rooms, is it strange, is it anything but human nature—an outburst of human nature—that she should have written to Mr. Crittenden severely about his wife taking out that furniture and selling it? Was it evidence of a wicked heart? Was it not the prompting of human nature?

Did Mr. Crittenden promise the defendant that he would procure a divorce from his wife? You have her testimony upon that subject. You have one great controlling thing, which is the great length of time that she has waited and

waited for this man. Seven years has she kept herself secluded, denied herself society, locked herself up as it were, almost in a convent, for the purpose of having Mr. Crittenden fulfill his solemn obligation to her. No man can say ought against her except in regard to her relations to Crittenden. Has not she kept her contract inviolate and sacred? Do not her letters speak trumpet-tongued and proclaim louder than any witness on the stand could, the reason that she has waited—waiting on account of his promise to divorce his wife with a promise made not once, not twice, but times innumerable.

Gentlemen, let us take one letter in which she sums the whole thing up. It was after she became Mrs. Snyder when she had no motive in telling anything but the truth:

"You have asked me some questions to which you of course wish an answer; otherwise you should never have been troubled with a line from so heart-broken and wretched a creature as myself. I now know that all I may say to you will profit me naught, and that all I can say your own heart says for me; your own conscience revenges, despite all the blame you put upon me, or all the honor you may advocate. Where was that honor when you led me on from year to year?"

"Where was that honor when you led me on from year to year with the promise of marriage, and until my name was bandied about, and my life and that of my child ruined—utterly disgraced—with no redemption except by a marriage with you?"

When she had put what she had supposed an insuperable barrier between them, when she had taken to herself another man and become wedded to him—it is then, gentlemen of the jury, when she has no motive to disguise the facts, or to lie, or to tell untruths, she asks him frankly: "Talk about honor! Where, oh where is honor? *You* talk about honor! *You!* who have promised me, year after year, for seven long years, and I confiding in that promise, that you would marry me, until in a fit of desperation, I have been compelled to put up a barrier between us that can not be broken down. Do *you* talk about honor, who have led me on, step by step, until you have not only ruined me, but have brought eternal ruin and disgrace on my little girl? Allowed me to build all my future hopes upon that—loving you day by day, more

and more, until my very soul was yours, rendering me unfit to be the wife of any other—rendering it impossible for me to love any other—making me a creature dependent upon your love for my very life—without it, a wreck and a ruin; and at last goading me on to frenzy and to this rash act, for which I must suffer forever.”

She *was* goaded on to frenzy. She tells you it was almost like a dream—her acquaintance and marriage with Snyder. She did not love him, she tells you frankly; but she must put a barrier between her and Crittenden.

“So be it! But, oh! do not drag honor in where there can be no honor! But what are words or tears to you—idle tears? God help me now, and forgive you! As for my position, I enclose that which will explain.” That was her articles of separation from Mr. Snyder. “I enclose that which will explain. Read it and return it to me. If I live, I may some day make use of it, if it is of any value. In my utter despair to-night do let me have solitude. Your cruel desertion, and his presence were more than I could bear. He has gone. When he leaves the city I do not know. It was to have been on the 18th; and be assured I will not trouble you long. My sad face and broken life shall not be here to mar your future with her.”

No longer will she stand in the way of any relations he wishes to carry on, or conduct with his own wife. Mark, gentlemen of the jury, she withdrew herself from him—not by killing him. If murder was in her heart, that was the time she was wrought up to commit the rash deed.

“I forgive you for what has been done in the past. May you be happy—may God pardon and deal to you not as you have this night dealt to me and mine.”

Can you listen to an argument from the other side, after reading that letter, that there was no promise of marriage? Was that a letter written to goad him on? to coax him? to entice him? O, no, that was a letter written in moments of grief—in the moment of utter despair—in a moment when all was black, when all was dark, and nothing was left but two living beings—herself and daughter—to go through this strange uncharitable world, with their reputation taken from them by the man to whom she had addressed the letter. She tells you all her grievances. She recalls and holds up before

him a picture of the past—the days they had spent together—the present—her gloomy condition, and the great uncertain, and undefined, and unknown future which she had in store for herself and her daughter.

Gentlemen if it was the only issue in the case—as to whether Crittenden had promised to marry her or not—I would be willing to leave it to you, as twelve sensible men, whether that would not prove it to your satisfaction, beyond any kind of question. The defendant made no preparation for killing Mr. Crittenden. What was the first thing which she would naturally have done on or before that evening, if when she went over on the Oakland boat that night her determination was to kill Mr. Crittenden? It would have been to have secured that large box of letters of hers. How easily she could have procured them from Mr. Crittenden! By a word or upon any pretext. Do you think she would have gone deliberately to commit this act knowing full well that after its commission she must be incarcerated for a long time, and allowed those letters of hers which she could just as well have secured and destroyed, to remain in existence to be read by all the family of Mr. Crittenden? Again, would she have left this little darling of her heart in the school at San Jose without a protector upon the face of God's earth—unprovided for? Would she not have made some arrangement and disposition of her worldly goods? Would she have left her room and her furniture and her clothing and her bank account without special arrangement? Would she have left the money that she had given to the brokers to loan for her at loose ends? She told her landlady exactly where she was going. Instead of preparing to commit an awful deed—a deed which is generally committed in the darkness of midnight without any witness except the All-Seeing Eye. She proclaims that she is going down on the boat for the purpose of seeing this meeting. Is that the act of a person who intends to commit murder? She saw the deceased just before she started for the boat. They parted friendly and tenderly. She knew he was to meet his wife. She went over on that boat to see that meeting. This was not an unusual or strange

thing. She was to see how true he would be to her; whether he would keep the word he had promised. It was the curiosity of a female and it was perfectly natural. She left openly and undisguised. She did not steal away by getting a carriage at some other place than her own door. It was the hackman she usually employed; she arranged with him to bring her back to the house, not expecting that she would be carried off by some other conveyance to the calaboose.

Mr. Crittenden had slept there the two nights before; she swears it; Mrs. Marillier swears it; Mr. Sanchez, the son-in-law, knows he was absent from his house the last night. He had prepared to return that night. Is it not probable that he was there just before he left, perhaps even to see whether Mrs. Fair was there or had gone on the boat? Can there be a doubt of his being there exactly as Mrs. Fair has told you that he did come there; that he was in the room and sitting on the sofa there; that he put his arm around her and kissed her; that he wished to be kissed by her and she declined, saying, "No, you are going to kiss your wife and I cannot bear to kiss you"; that he said, "I am not, I assure you I am not. I am simply going to meet her and take her home and then I shall return here"; and that he did kiss her and they parted in a friendly way?

I want you to bear this circumstance in mind—the place she selected on the boat to see that meeting. She tells you that a few days before the shooting she went over there to see that meeting. She met Mr. Nourse on the boat and asked him where the best place was upon the boat to sit in order to see persons meet who were coming on board from the overland train of cars, and Mr. Nourse told her to go to the end of the boat and take a seat by that railing and she could see them as they passed in on the deck beneath. Mr. Nourse takes the stand and tells you that he did give her exactly that advice. She says when she came on board that day she did take that seat. What occurred at various times after she got on the boat is really a blank to her—more a dream to her than anything else. Did she intend to shoot Mr. Crittenden at that time if they met and kissed? She could not

have done it from the place where she sat without endangering the lives of all the passengers around there who would be coming in at that time. She did not get into a position where she could shoot or where there would be any certainty of hitting if she did. The position she selected on the boat is utterly at war with the idea that she intended to take that position for the purpose of shooting him upon their meeting, if kissing should follow.

She was in the habit of carrying a pistol; she tells you that. She was taught to do so by Mr. Crittenden himself. She carried his pistol for one or two years. Did she have a pistol for the purpose of this shooting? A long time prior to this shooting Mrs. Fair purchased a five or six shooter of the gunsmith and some days before this shooting she came to his place and exchanged a pistol. Mr. Bach tells you that the pistol which she left with him was a better and larger one than that which she took in exchange. The prosecution would have you believe that this is evidence of intent and preparation, but what does Mr. Bach tell you, when she first bought one, that she told him something about boys bothering her and that she carried a pistol on that account. That is the way she came to buy the first pistol. Some one had told her that pistol was not good for anything and so she went to the gunsmith and told him so and he gave her another in its place. If she had bought this pistol because she had premeditated shooting Mr. Crittenden, would she have gone and procured it of the same man? Would she have furnished evidence against herself that she had bought a pistol with which to kill Mr. Crittenden? The acts connected with the purchase of the pistol are entirely at war with anything like a fixed or preconceived purpose on her part of doing injury to any human being or for the purpose of murder.

Consider the opportunity she had of killing him without ever being detected. It would not be necessary for her to go down on board the Oakland boat and commit this act, where she had no chance of escape. She could have done it in his own bed-room, the night before his wife arrived. She could have done the deed then, and they never would have met.

She could have prevented that meeting, stopped it, and nobody would have been the wiser for it. A hundred times before she could have done it. Had she not occasion before this time? Had he not broken his promise to her time and again? Let us go to the house of Mr. Crittenden himself at twelve o'clock at night, when she traveled there through the streets alone; and was met in the hall by Mr. Crittenden, when he comes down the stairs and says: "I am disgusted with you women; you have completely unsexed yourselves." Was not that the time, if she had murder in her heart, for her to have committed the deed? The moment when she was so grossly insulted in the presence of his family, his wife, his daughters, and his sons, if she wished to accomplish this act in their presence. When she had him right by her side in his own hall, in his own house; when her anger and passion must have been worked up to the tautest tension; when all the wrath and passion she had within her must have been brought to the surface; when she received that insulting language, if murder was in her heart would she not at once have put an end to Mr. Crittenden? Why did she not do it? It was the furthest thing from her mind. She never dreamed of it. Opportunity upon opportunity had come and passed when her reasons would be quite as strong as at the time she did shoot him, but never has she attempted or undertaken to kill him. So I say, gentlemen, she did not prepare at the time she left here to kill him, nor had she a thought of that kind in heart or mind at the time the shot was fired, or ever in her life.

It is claimed by the prosecution that Mrs. Fair had threatened to take the life of Mr. Crittenden. About a month before the arrival of the family, an upholsterer who had been in the habit of doing business for Mrs. Fair, told her he was fitting up rooms for Mrs. Crittenden who was expected shortly to return here, and he spoke of the elegant furniture he was putting in the rooms and that he must have the work done by a certain time. Mr. Crittenden had told her that they were not to return; she had not heard up to that time that they were coming and in a moment of excitement she says, "Mr.

Crittenden has said his family are not to return here; if they do return here one of the three must die" or "will die." Now, gentlemen of the jury, how many times have you within your recollection and observation heard friends make remarks as severe as that—threats of as savage a character—without their having to your knowledge the slightest idea of carrying them into execution any more than I would if I threatened to kill one of you tomorrow morning? How often have you heard one person say that if another did so and so he would take his life? or if he does so and so "we cannot both live in this country?" Mr. A. or Mr. B. said something about you, Judge Campbell, yesterday"; and Judge Campbell very possibly replies, "Well, if he did, this country is not large enough for us both." How common and how unmeaning are remarks of that kind! Mrs. Fair says it is very likely though that she did make some such remark; she would not undertake to contradict the statement of the upholsterer; very likely she may have said so. But she tells you she was excited at the time and she tells you also that she never contemplated or ever had the least thought or idea of doing what she said; that she did not dream of any such thing. Mr. Volberg aggravated her very much and said everything he told her was true, but she never dreamed of injuring either one of them by reason of their return.

Now, gentlemen, they tell you next that at one time she fired a pistol at Mr. Crittenden which did not hit him and this one little piece of evidence is one of the strongest proofs of the truth of everything Mrs. Fair has stated. Why? They asked her on cross-examination if she did fire a pistol. She said "yes." If she had wished to lie about it there was not another witness on the face of God's earth by which they could prove it unless they put her mother upon the stand. Does not that show that she is not only telling the truth, but the whole truth—that she does not wish to conceal anything of which she has any recollection? And what were the circumstances attending the firing? At the time she and Mr. Crittenden had that difficulty and misunderstanding, she told him they must separate. One or two days after he came to

the door, three times in one evening and the mother refused him admittance. Mrs. Fair was unwilling to meet him. Gentlemen, here is another time she might just as well have killed him as not. She was thoroughly discontented and angry with him, but she lets him come three times in one night and go away with a pistol in her house without even going near him. The second night he comes twice without success. He comes the third time that night and gets up on the step and in the hall. Mrs. Fair goes out to the door and fires a pistol down the steps, not at him. She did not see him at all. Her mother told her that he was in the hall there behind her at the time she fired.

Was anything in the way if she had wanted that night to kill Mr. Crittenden that would have prevented her doing it? Suppose she had committed this act—suppose she had said, “Come in, mother, step away from the door and I will let him in” and then had stepped out and killed him that night—that would have been the end of Crittenden would it not? He had been there three times the night before and twice that night and he came the third time and she might have killed him on any of those occasions, and she would have had just as good cause for doing it as when she did kill him on the Oakland boat. The counsel calls your attention to a threat in a letter written from New York in 1869. I want you to imagine the surroundings of Mrs. Fair upon that occasion. She went to New York with the distinct understanding that Mr. Crittenden was to follow her and that they were then to go to Indiana and get the divorce. He writes or telegraphs that he cannot go or will not go. She finally makes up her mind that at this time, he having violated his agreement again she will put a barrier between them once more. She buys her ticket and secures her passage to Havana. After, she gets a dispatch from Mr. Crittenden, which this letter is an answer to, asking him if he is crazy, or what he means. In this letter, which the counsel has read, she says: “People will think I am a fool here to follow your different orders and directions.” There she is; first the word is, “do come,” and then “don’t come,” and then “do come” again, and then

“don’t,” and finally “do come back,” the telegraph reads. Then she writes, “I can not now; I have taken my ticket, and am going to Havana. When I am there I will return to you again. But if I do return this time I will ruin everything—unless things go on according to our arrangements.” And in that letter, the counsel says, she refers to Mrs. Crittenden.

She did go back. Did she ruin everything? When she came back, in 1869, did not Mr. Crittenden break his promise again? Did she do anything in pursuance of that threat? No, not a thing. It only shows you that these unmeaning threats amount to nothing. She did nothing but come back and again submit to his promises. But what more, when she returned? She has made the acquaintance of a gentleman in Havana; a Virginian by birth; a merchant in Havana. He was desirous of marrying her, and the matter was held open. She returns to San Francisco, shows Mr. Crittenden this Mr. Sowers’ letters, tells him what has occurred, and that she has come back for the purpose of having a complete separation between them, and that she will then go on and marry this man, whom she thinks she can learn to admire, although not love. She needs a protector, and he is a good man. It will give her a home—give her little child a home—what she wanted. And how does Mr. Crittenden receive that? “If you marry that man, I will murder him and you too. Don’t you answer his letters. I will follow it up, if it is ten years.” What does she do? She again yields to this man, who has always had the power and control over her. This, now, was away down in 1869. He procured rooms for her at Mrs. Hammersmith’s before she had arrived here. She went to Mrs. Hammersmith’s; this was in July. In September Mr. Crittenden makes an arrangement for her to go East again. She again goes East, he agreeing to follow her in two months. There she is going at his man’s bid all the time. He met her in New Orleans, traveled with her to New York and to other places until they finally arrived at White Sulphur Springs, in Virginia. Mr. Crittenden received a dispatch which called him home on business; he said he would return within a month and they would go to Indiana then

and get a divorce. He started and went to Baltimore and returned again to White Sulphur Springs and spent another week, his son Howard being there also at that time with them. He then starts for California with a promise then that he will return within one month and "the act shall be accomplished." She waits the month, he did not return within a month and she came to California again and surprised him. He says, "Why, I should have come within a week or two; I intended to come on and should have been on in a week or two. Why did you come?" He again convinces her that everything is all right and she goes at his bidding whenever he pleases. He sends her first to one place and then to another; she comes back reconciled again and settles down and things go along quietly until this rupture at the time she went to his house.

Gentlemen, were those threats at that house anything unusual or improper, or anything that any person would not have made under the same circumstances? He had been to her room that night; she has described to you how he came in, and what occurred that evening. He came in, and she asked him to take off his coat; and he says: "That means that I should stay." She says: "No, it is to rest yourself." Finally, he did take off his coat, and sat down and rested a long time. She then told him that that night she must have a decisive answer. He became angry, and said he would not give an answer that night. She said she must have it; and she says, finding she was getting excited, she went into the other room for the purpose of taking some valerian, or something else, to keep her nerves quiet, and while she was gone she heard the door slam, and returning immediately, found he was gone. She then went out and followed him to his own house. After he went in, she got to the door, and Howard Crittenden came and let her in.

Parker Crittenden tells you that he came down stairs, and told her that if she did not go away, he should go for the police. She says: "If you go for the police, you will be very sorry for it." Is it not natural that she should say that? Is that a threat? Would not any woman have said

that, under the same circumstances? The idea of the man who was professing to be her lover, her future husband, threatening to send for a policeman to put her in the station house. She was excited under the insult—the grossest insult that could be heaped upon her. She refused to capitulate, or to have anything further to do with him, after that night, until he sued, and sued, and sued again; until he finally says, “I will apologize; I did treat you shamefully in the presence of my family, and I am willing to atone for it by making a proper apology in their presence.” If she had sworn to this, and nobody else, O, would not the learned counsel have stamped it as one of the most vicious lies that ever fell from a witness’ lips? He would have asked you: “Do you believe that A. P. Crittenden would have made an apology before his own wife to his own mistress?” That would have been his course of argument. But, fortunately, we have proved the fact by Mrs. Crittenden herself. Is this evidence of a mistress? Is this the way men treat their simple mistresses?

We have got through with all the evidence of threats with the exception of the evidence of Mrs. Abbott. She tells you the improbable tale that Mrs. Fair told her that she intended to shoot or kill Mr. Crittenden unless he made her a present of a \$3,000.00 set of jewelry. I say the improbability of the statement on its very face is enough to condemn it if there was nothing else connected with her testimony. She says she was a sister of Col. Fair. I am very glad they put her upon the stand because her evidence shows you, which I got out of her after a while, the good qualities of the heart of this woman, the defendant. She came and introduced herself as the sister of Col. Fair, stated her circumstances and conditions and what did Mrs. Fair say to her? “Come here and take my rooms, I am going away; take my furniture and live here. I will support you, I will give you means.” Was not that charity indeed? Could that have come from the heart of a murderess? Is that the act of a bad woman? a woman who is trying to take her sister and redeem her and lift her out of the disgrace which she has brought upon her-

self—living upon the charity of a man who is abusing both her and her children. Her great, large heart opened when it was knocked at and she says, "Come to my rooms and take my furniture and I will protect you and support you." Is not this true? I produce her own letter, written by herself to Mrs. Fair in which she thanks her for what she has done for her—thanks her for it. What would most women have done in such a case? They would have turned a cold shoulder and said: "I do not know you; I have no money to spare; attend to yourself; I have as much as I can do to support myself and my mother." That is the way she would have been received by the uncharitable world; that is the manner she would have been received by any one excepting a woman who had a loving and Christian spirit and a noble heart—a heart to feel for her fellow-sufferers. No, gentlemen, Mrs. Fair at that time exhibited by her acts the true character of her heart, and let me ask you if murder ever had a hiding-place in such a heart as that? No, gentlemen, never; my experience says never; your own good judgment tells you never.

I will now turn my attention to the question of evidence upon the matter of general reputation, that being an outside issue here which has been made. The first witness upon that subject was Mr. Evrard. He is asked the general question, Do you know the general reputation of the defendant for chastity? And he said, "Only from hearsay." Finally they got him to say that he does know it and he answers the question in the affirmative. On cross-examination I ask him whom he had ever heard speak against the character of Mrs. Fair; he says, "Well, I do not remember any one." Then I ask when he first heard it spoken of and he replies it was when he was on the police. He says, "I do remember one man" and he gave the name of some lawyer here. It was a long time before I could get him to remember anything upon that subject. But he did at last. It was, he said like this, remarks which he heard upon the street. Mrs. Fair would pass and some fellow would say, "Do you see that? She's 'on it'." I think he said there was some remark made with

reference to Colonel Fair. He says, at the time Colonel Fair shot himself, he heard people around that immediate vicinity say that it was in consequence of his jealousy, or of her acts towards Colonel Fair.

Now, there is all the reputation Mr. Evrard has heard of, when Colonel Fair shot himself; and not a single witness among all they have called has pretended to say that anybody ever charged her with being anything but a most virtuous and upright wife to Colonel Fair, except somebody in an excited crowd, at the time he shot himself, made a remark of that kind. Now, you can see how easy a reputation is started and built up. From what was said at that moment, without a cause, without a reason, it spread forth. Whenever another man heard it, another and another repeated it until it got into what they call a "general reputation." And when you come to ask the man what he said, what do you have then? He don't know anything about it. Gentlemen, isn't it terrible that men will take the witness stand and tell you that one's reputation is bad, and when you come to ask them what they have ever heard about it, they can not tell you a single thing. And still they have got a judgment about it. Is that kind of evidence satisfactory to the jury? Why, gentlemen, what one of you could be tried by that rule? What man in this Court-house, or what woman within the hearing of my voice, or in San Francisco, could be tried, and her virtue or chastity be tested by that rule, and she come out fair and square? If a man can take the stand and say that your general reputation is bad, and when you come to ask him why, he can not give you a single reason—can not tell you what he founds his opinion upon—not a single circumstance—would you not say that it was evidence that should never be resorted to, under any circumstances, in a Court of Justice?

"Mr. Evrard," I said, "Have you not seen ladies whom you knew, or had every reason to believe, were respectable and virtuous, pass along the streets where bummers stood congregated on the corners, and them point them out and say, 'She is on it,' and make remarks of that kind?" A. "Yes, sir."

You know it, and every one of you have seen it. I have seen respectable women going through the streets here, and heard men who hang around the streets making a specialty of pointing them out, as if they knew them, and making these unkind remarks, and that is the kind of reputation that Mr. Evrard has testified to here.

Let us see if there is a woman, I care not how virtuous she is, I care not how well she may demean herself, that has gone through what Mrs. Fair has in this State and in Nevada, that they would not make remarks about. Take her, young as she was in those days, and, as is conceded, attractive, accomplished, fine-looking, the observed of all observers whenever she made her appearance at the dinner table or in the drawing room; take a woman, I say, of the strictest virtue, and let, in the first place, her husband commit suicide—take that as a starting point—how an uncharitable world will surmise and give a hundred reasons why that husband committed suicide. Some who are jealous of her—and I am sorry to say that that jealousy extends more to her own sex than the other—will start uncharitable and unfounded rumors as connected with that suicide. She then is left penniless, a widow of a suicide, with a little child barely six months old to support. What does she do? She is compelled at once to look out for some way of supporting herself honestly.

She takes a house and keeps a lodging house in San Francisco. She goes to Sacramento, and also opens a lodging house for gentlemen. She finds that with all her exertions to get a living for herself and daughter and mother, she is involved in debt. She meets McKean Buchanan; he suggests to her to go upon the stage. She takes a piece and learns it and plays it two or three times in Sacramento. She then goes to San Francisco and plays it once or twice to gain a livelihood. Not following that as a profession, for as soon as she accomplished her object she quits the stage. She goes to Virginia and opens a lodging-house there. Now I ask you, gentlemen, judge from your own experience in California. A woman who has kept a lodging house in two of the principal cities in the State; who has been compelled, from the force of

circumstances, to go upon the stage; who keeps a lodging house for men in a mining town; I say that if she had all the virtue that was ever combined in the purest virgin that ever breathed, she could not avoid slander. It is just as sure to be pointed at her, and follow her—just as sure as she was to follow these avocations.

That is the kind of reputation, and the only way a reputation has ever been gotten up against this woman, except by her relations with Mr. Crittenden himself. They brought one man here from Nevada, who lived there, and no doubt was brought from there. He says he was here on other business. This man, Robie, could not tell his landlord's name; what business he was engaged in; what rent he had to pay for a mill he was renting somewhere; who had mills in every part of the State; who was a deputy sheriff, a broker, and a little of everything; and who finally comes down here to set up in business as a wholesale swearer upon the reputation of females.

This is the kind of evidence that they have brought into Court, and introduced into the case for the purpose of vilifying the character of Mrs. Fair. When I got through with Mr. Robie, what did he know? Nothing. He heard, when he was in Virginia that because she would not let the man living in her store cover her signs up with flags, that she was called a secessionist. She was a woman wanting in chastity because she was a secessionist. This was his idea of a want of chastity.

A very able law writer, Cowan, has instanced one case which illustrates so thoroughly and completely this question of general reputation, that I can not forbear stating it to you. Two old farmers had lived and owned adjoining farms for twenty years. One of them, being a witness in Court, his neighbor was subpœnaed on account of his dislike for him, in consequence of some misunderstanding. They called this witness upon the stand to swear that he would not believe him upon oath. He was put the general question: "Do you know this party? I do. How long have you known him? Twenty years. Do you know his general reputation for truth and veracity? I do. What is it—good or bad? Bad."

The counsel on the other side—"Mr. Jones, what do you mean by saying that this man's reputation is bad? What have you heard about him? Well, I will tell you at once all I have heard. He has lived on the next farm to me for twenty years, and he has never had a good fence on his farm during all that time; and a man who could not keep a good fence I would not believe under oath."

That is the kind of evidence they have introduced here.

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When she was found to have these relations with Mr. Crittenden people commenced talking and in their talking whatever had been hinted or suggested before that time was taken up in connection with this, and in that manner a reputation was built up. But prior to her relation to Mr. Crittenden they have not established that her reputation was bad for chastity. Gen. Hutchinson from Sacramento, keeper of the first and most extensive hotel in that city in that time, states that he never heard her reputation for chastity questioned while residing there. Nor has any witness, nor all together, when you come to scrutinize their testimony carefully, stated any fact or circumstance from which you can infer that her reputation was bad before her relations with Mr. Crittenden. Bear in mind also the testimony of Mr. Lloyd Tevis. He tells you he had heard parties speak of her general reputation. I asked him the names of these parties and proved by him that every one of them were Mr. Crittenden's intimate, particular friends. Mr. Crittenden's friends were opposed to his course of conduct and they talked about her; every circumstance of her life was discussed by them that would have any bearing upon her reputation or position in society. Mr. Tevis went further. I asked him if he did not tell Mr. Crittenden of the reputation he had heard; he said he did. So Mr. Crittenden above all persons in the world should have known her reputation. It was he who introduced her publicly to his family and took her into the public dining-room of the Occidental Hotel with him. This to the mind of any reasonable man is a satisfactory, full and conclusive evidence of the fact that this sham reputation

that they have attempted to establish was without foundation.

Judge Campbell in his argument makes a very vindictive assault upon the defendant, improper and uncalled for when he refers to the fact of her having procured a divorce from her husband, Mr. Grayson.

Mrs. Fair tells you that after she left New Orleans and arrived in San Francisco, she was served with a summons; that she wrote back to her lawyer in New Orleans, and asked him to attend to the divorce suit. That before she married Col. Fair—a lawyer, a man of education, a man who would not marry a person blindly, not knowing what he was doing—she laid all the facts before him. Before the marriage, Col. Fair told her that the divorce was all right. The learned counsel asked Mrs. Fair if she did hear Judge Dangerfield state to Col. Fair, that the decree of divorce was not a good and final decree? She says she did not. Judge Dangerfield was right here in our midst. What was the object of that question? Was it to intimidate—was it to terrify Mrs. Fair? She knew if she told an untruth Judge Dangerfield could contradict her. She denied that anything of that kind had ever occurred. Why did not they call Judge Dangerfield and ask him what kind of a paper it was Col. Fair presented to him when he asked him to marry them? Why, gentlemen, it was just exactly what Mrs. Fair tells you it was. She learned in 1869, when she was in New Orleans, the defect. Under the Louisiana code, a party applying for a divorce upon the ground of desertion of the other party, after publishing the summons, is entitled to a decree from bed and board. Mrs. Fair tells you that that is the kind of a decree which she found out had been entered when she went to New Orleans; not a decree dissolving the bonds of matrimony.

Mrs. Fair tells you that when she arrived in New Orleans she ascertained that entry of the decree had been neglected by the attorneys. Take the letter which the counsel put in evidence and has commented so freely on, written by Mrs. Fair at New Orleans on 1st May, 1869, and what does that of itself tell you, or foreshadow? She says she has written to her

former husband a letter, threatening that she would have him arrested for bigamy, unless he makes those divorce papers come out right. How would she dare to address him a letter of that kind unless she was entitled, as a matter of right, to the divorce. And she was entitled, as a matter of right, to ask him to complete what he had undertaken. She does not go there with any knowledge of an existing defect in the divorce; but she ascertains it, and she tells him that she is with Colonel Fair's nephew at the time, and he gives her the intelligence. And she travels with him to different places after the information comes to him. Does he think the less of her for that? Does he say: "You married my uncle before you were divorced, and therefore you should be condemned." No; he treats her like a lady. He sees the trouble that is surrounding her; that there has been a technical oversight by counsel, and that she has not been to blame for marrying his uncle, and he lends her his assistance. If Colonel Fair's nephew had supposed, or if there had been no divorce there, or any pretense of a divorce, why the necessity of writing that letter of May 1st, to have the thing made right? What necessity was there of her doing so? It is unreasonable, gentlemen of the jury. She wrote this letter of May 1st, speaking of her feelings from having ascertained some fact which is not mentioned in this letter. But her explanation, when she is put on the stand to explain the terms in the letter, is full, and satisfactory. She feels as though she then and there would sacrifice her own life and the life of her child. What was there so startling? What circumstances had transpired to bring all these things about, unless it was something entirely new to her? unless it was a fact which had been developed and ascertained after her arrival in New Orleans?

But, says counsel, they have not produced the papers they have in their possession. Gentlemen, shall I go through another mockery here? Shall I produce papers which do not show that at the time she was married to Colonel Fair she was not divorced—by reason of a technicality—a technical omission? The moment I offered them, that moment they

would be ruled out by his Honor. Why? Because they would not establish the fact of an actual divorce from the bonds of matrimony at that time, and, therefore, his Honor allowed me to show that Mrs. Fair really believed there was a divorce at that time. And she told you here that she so believed, and gave her reason for so believing. She stated that Colonel Fair had charge of it; that Colonel Fair was a lawyer; that Colonel Fair told her the divorce was all right before she married him. This is the evidence, gentlemen, which surrounds and explains Mrs. Fair's condition.

She did feel as she says in her letter, "terribly." She was frightened. You can imagine the thoughts that at once crowded about her brain when she discovered there had been no final divorce. Imagine what her feelings must have been! "Have I committed bigamy? Is my little daughter a bastard? Have I been imposed upon by Col. Fair, in whom I trusted? Is he the man who has imposed upon me? Have my lawyers in New Orleans intentionally imposed upon me?" Gentlemen, if she had known that fact would she herself have gone right down into that city where she was married and where these things were known, submitting herself to arrest for bigamy? No, she would have kept far from New Orleans until this matter had been put right. The fact that she demanded of him that he complete what he had undertaken and that she would have him arrested for bigamy unless he did complete it, is the most conclusive evidence that she was conscious of her own innocence upon the subject.

It has been claimed that the whole and sole object of Mrs. Fair was to get money out of Mr. Crittenden; that that was her sole desire; that she had no love, no affection. Money was her God. Money was the idol she worshipped. Avaricious to the extent that she could pretend to love, or write that she loved, this man for six long years, and still her only object and her only motive, the counsel would have you believe, was money.

I might commence with the letter of May 8th, written by Mr. Crittenden when she was in New Orleans, when he speaks of their meeting and talking these matters over face to face.

She was to see him a broken man, so far as money is concerned. Money? Did she expect money from him? Stocks had ruined him. He had no money left. She at that time had her \$40,000 in cash in her own right. But, says the learned counsel, some of her former letters speak of buying a new set of furniture; of assisting her with a \$5,000 note, and asking him for money on one or two occasions. Gentlemen, has she denied that? Mrs. Fair told you that whenever she wanted money—her money being all in stocks and tied up—she asked Mr. Crittenden for it, and she had hypothecated these stocks to secure \$5,000 that she had borrowed to buy more stock with. She tells you that she had no ready money except what she got those years from her lodgers. She did call upon him for money. She goes further and says: "As any wife would call upon her husband."

When you take the correspondence and read it all through, you find, gentlemen, that she had stock as she stated; you find that it was her own stock; you find that Mr. Crittenden always spoke of it as her stock; you find that she sells it—she disposes of it. Were her motives mercenary on that day when Mr. Crittenden was shot—when he was a poor man and she had \$40,000 in bank in her own right, of her own money? Would she have clung to this man 58 years of age for money? If money was her God; if her sole and whole ambition was to make money out of Mr. Crittenden, God knows she had accomplished that. She was independent for the rest of her life. She had her \$40,000, and her child had her lot. Look these facts squarely in the face and answer me: Could money have been her motive or her object?

Was it not a note that she herself gave to the Bank of California? There is one letter in which she finds a great deal of fault with Mr. Sharon; she did not want him to have the stock in his hands because she distrusted him. Mr. Crittenden had told her that she was liable to be called upon to pay that note on one day's notice. He said, "Very well, I will see that you have more time. I will take care of that." That is the kind of assistance he gave her in reference to this note. I now call your attention, gentlemen, to a proposition

to show you she was dealing in stocks herself. In a letter written in Virginia, 1867, by Mr. Crittenden to Mrs. Fair:

"My darling: I propose to tell you now all about the Savage Company so that you may form your own opinion about the value of the stock—present and prospective—and exercise your own judgment about selling."

He speaks of her exercising her own judgment, not relying upon him. He says, "I will give you the facts so that you can exercise your own judgment in regard to selling your stock." This is a business letter, he refers to business matters as does almost every letter from Mr. Crittenden which has been read. In nearly every letter from Mr. Crittenden you find he warms himself up, and uses the most lovable and affectionate terms and expressions. At other times, he complains of his feebleness and sickness, and is almost despairing. But in every one of these letters he breaks out at some part or other, and commences to talk about stocks and other business. But when this same thing occurs in the letters of Mrs. Fair, it is a most remarkable thing, according to the judgment of Mr. Campbell. And yet such references appear in almost every letter written by Mr. Crittenden himself.

I might go on, gentlemen, and call your attention to a great many letters upon the question of money transactions, but I have called your attention to all that I deem necessary. I might have read others, for the purpose of establishing the fact that she, herself, made her own money by investing in stocks. Her letters from New York show—what? They show that she had her money with her there, (\$20,000) and that Messrs. Lees & Waller acted as her brokers, and put it in bonds for her. She had it with her in New York; she wrote so to Mr. Crittenden, and she tells us that she brought those bonds back when she returned here.

Beyond all cavil, Mrs. Fair made money herself; her motive in clinging to and standing by Mr. Crittenden was not money; it was exactly what the letters on both sides indicated—pure and sincere love and affection. So much for the money branch of this case.

You remember Mrs. Fair's testimony; that Mr. Crittenden

attended to all her financial affairs for her, and by these letters you will see that that is the truth. He advised her what to do, and when to act, and kept her thoroughly posted about the mines, as he himself was. Indeed, he says in one of his letters: "Now you are as well posted, as well advised on these matters, as any person on the *inside* could be or is."

Next, gentlemen, it is claimed by Judge Campbell that the relations between these parties were nothing more than this: of mistress—of kept mistress.

A man who keeps a woman as a mistress does it, as you may imagine, for a purpose; it is for one single purpose—to gratify his lust; for no other reason, for no other purpose. If Mrs. Crittenden is to be believed, gentlemen of the jury, this was not so. She tells us that from the fall of 1863 down to the day of the shooting, whenever Mr. Crittenden and herself were in the same place, whenever they were in the same town, Mr. Crittenden never slept away from her but for about ten nights, all told. Does not that one little circumstance stamp and fix indelibly upon your mind the fact that the relations existing between Mr. Crittenden and Mrs. Fair were exactly what she told you they were—that is, that he had promised time and again to procure a divorce from his wife and marry her? Does the man who has a mistress send her to New York and New Orleans, and other parts of the world, keeping up a constant correspondence with her during her absence? Or does he wish her near at hand, where he can make use of her at his will and pleasure? Does a man keeping a mistress take the same care of the letters and correspondence he receives from her that he would of any important papers in his law office? Does he treasure these "notes of lust," and keep a box for their special reception? and write a letter at a time when he lay complaining and suffering from illness, to that mistress, telling her that if anything happens to him he has sealed these letters up in a box, and has written a letter to Judge Cope, telling Judge Cope to deliver them into her hands, and into the hands of no other living being? Does a man who is keeping a mistress follow her to the Atlantic States and spend a week with her at White Sul-

phur Springs, in company with his own son? Does he travel through New York with her, where he meets another one of his sons? Does he put up at the same hotel in the country where he is well known, as he was well known all through the South? And you all know that the name of Crittenden was known coextensively with the South, as the name of a great politician. Does a man who has a mistress write letters of a character which Mr. Crittenden has written to Mrs. Fair? Does he interfere when she wishes to marry? Does he interfere after she is married? No, gentlemen, something more than that operated upon the mind of Mr. Crittenden—far above a mistress did he view Mrs. Fair. He looked upon her, to use his own language in one of his letters, as the one chosen by God to be his companion. He says that they were born for each other, and speaks of their future; of the happiness that is yet waiting them, laid up in store for them after that one obstacle which he speaks of in his letter is out of the way. He writes to her not the kind of a letter which a man would address to his mistress, but such a letter as a man would address to his loving wife. He is punctual in his correspondence. He complains in his letters if she omits or neglects writing to him one single day when they are separated. He telegraphs to her that he has heard certain things, and that his life depends upon their truth. He writes to her about his own business, every act of business he himself is attending to. He gives in detail the particulars of the condition of his own health, from time to time, and from letter to letter; pictures to her his sleepless nights, his weary hours in her absence. He does everything that a man would do who sincerely and devotedly loves a person with whom he was corresponding, and with whom he had such associations. Talk to me about Mr. Crittenden looking upon Mrs. Fair as a mistress! Gentlemen of the jury, if he did, he was one of the most deceitful, he was one of the most vile of wretches. If he wrote those letters in the spirit of anything except pure sincerity, he ought not to be forgiven by man or God! He is beyond the pale of forgiveness! If a man of his noble intellect, his great reasoning faculties, his high, exalted, elevated position in

society, has been keeping up a correspondence of this kind, and holding out inducements of this kind, merely for the purpose of lust, and lust alone—for the purpose of inducing Mrs. Fair to believe in him as a true and sincere and affectionate lover—I say he should be stamped as the veriest scoundrel who ever trod upon the face of God's footstool; and every man within the hearing of my voice will agree with me in that. No, gentlemen; that was not the character of A. P. Crittenden. I knew him well; and I regret that I am compelled here to-day, in defense of the living, to even allude to him or his past career. It is with feelings of regret that I do it. The grave is the place that should bury up all—bury up the deeds—all the deeds that the man has done should be buried with him. But when his actions during his earthly career are important and necessary, as illustrating or throwing light upon a matter investigated in behalf of a human being who stands before the bar of justice, to answer to the charge of murder, then, gentlemen of the jury, the secrets of the grave are no longer inviolate; then the deeds that man has done in the body must be made public; then what he has done or said becomes the property of the party to whom he has done it or said it.

Is Mrs. Fair to be denounced by Judge Campbell, because she has made use of these letters? In the name of God, what should she do? Mr. Crittenden is not here to speak. If Lone Mountain could open its ghostly jaws—if it could open that dead, and cold, and silent tomb containing the body of A. P. Crittenden to-day—if he could make his appearance before you in spirit, with the power of speech he would say, "Use those letters, Mrs. Fair; you have my full consent. It is a providential act; it was through providential guidance that those letters have been preserved, that you might use them here in your moments of need, in your moments of suffering, in your moments of trial." If he could be on that witness stand before you, he would hold up both hands, and he would appeal to you in tones of eloquence which I am unable to utter, in behalf of this poor, unfortunate woman. He would tell you, gentlemen of the jury, your duty. He would tell

you what had frenzied her brain. He would tell you of the manner in which he had treated her day after day; how she had lived and hung upon hope deferred; he would bring to your minds matters and facts, and convince your understanding, and would say to you, "Gentlemen of the jury, for God's sake, if it is the last act of your lives, acquit this woman." And now, gentlemen, she is to be blamed for what? For introducing in evidence letters from this man, the only evidence she can produce for the purpose of showing her true relations, to which she testifies.

Suppose we had not produced these letters? Suppose that she had taken the witness stand and told you these letters from Mr. Crittenden had been destroyed, would you have believed her? You would not. Nor would I. Nor would any other man who knew Mr. Crittenden.

Now, gentlemen of the jury, I propose to discuss the evidence in this case bearing directly upon the issue we are trying, that is, the real condition and state of the mind of the defendant at the moment the fatal shot was fired. I propose to satisfy you that upon the opening testimony of the prosecution, before looking for one moment at the evidence offered by the defense, that this woman's mind was in an unconscious state at the time she shot Mr. Crittenden. What is the proof on the part of the prosecution? That on the third day of November, in the evening about dusk, Mr. and Mrs. Crittenden were on board of the ferry-boat; that Mrs. Fair being there veiled, stepped up to Mr. Crittenden and without a word shot him through the heart in the presence of his wife and daughter and one of his sons, I think, and in the presence of hundreds of people, or in their almost immediate presence, who were passengers on board of the boat. He then introduced Captain Kentzel who shows that the defendant could not have been possessed of sound reason at the time of that shooting. What does he testify? That he heard the report of the pistol. He went in search or in pursuit of the party who had fired it. He found the defendant; Parker Crittenden came along or was with him and remarked to her or to Captain Kentzel, "This is the woman who killed my

father" or "who shot my father." She said, "I do not deny it; he has ruined me and my daughter." Taking her to the other end of the boat she says, "I have a spell" or "one of my spells"; "I want some drops." She talked excitedly, as Captain Kenzel says, at random. They arrived at the city prison and Captain Kenzel says she asked some one to go for a doctor; again she asked for drops; she was put in prison; Captain Kenzel then left her.

Mr. Crittenden testifies that he said to her, "You have shot or killed my father." She replied, "I do not deny it, I intended to," or, "I intended to kill him." One expression Mr. Parker Crittenden uses there that nobody else heard: "I intended to kill him, he has ruined myself and daughter" or "myself and child." And that is about all Mr. Parker Crittenden remembers.

They called F. P. Dann, an attorney. He tells you that he was present, that he simply heard her say, "I do not deny it." They called Mr. Woodson, another lawyer, and he said somebody said to her, "You have shot my father." She said, "I don't deny it. He has ruined me and my child." To use the expression of Mr. Woodson, she had a subdued or suppressed excitement; not that raving, tearing manner which occurred subsequently after she got in the city prison, but a subdued state of excitement, not attempting to sham or put on; any evidence of insanity was farthest from her mind. When she gets to the station-house she sits in a chair some little time and her talk was somewhat incoherent. About the only thing that any one really understood there was sending for the doctor. Within an hour from that time, according to the evidence of the prosecution, a doctor was in attendance upon her—Dr. Lyford.

Their own witness testified to the fact that she bit two glasses; that she was strong; that it required all the strength and power of two strong men to hold her; that she was incoherent; that she seemed to be entirely unconscious. These are facts that they themselves have put in evidence in regard to the place of shooting, the time of shooting, the circumstances which followed immediately after the shooting and the circum-

stances which occurred in the city prison for two, three or four days subsequent to the shooting.

They then called witnesses to show that she was perfectly sensible on the day before the shooting; Mr. Maurice Dore to prove that the day of the shooting she was at his place of business to inquire with regard to a loan of money and to a lot that he had to rent for her little girl; by parties from the City of Paris store, that she went in there and inquired for a dress and agreed to go back and determine whether she would take it or not; by Mr. Gray, the music man, that she came there and procured a receipt for a piano which had been left there for over a month prior to that time; by the hack-man that he took her down to the boat and that he agreed to bring her back again the same evening, to wait for her, that he was her regular and usual hack-man; that she left her own house to get in the hack; the kind of dress she wore; all these things are put in evidence on the part of the prosecution.

Let us see whether as a matter of fact, Mrs. Fair does remember the occurrences of that day. It certainly was not a matter which she had prepared, that she had arranged with her counsel to put in evidence here, or had kept herself intending to testify to, because the first we hear of that is from the cross-examination of Mrs. Fair by Judge Campbell. She said that she did not remember being at the City of Paris on the day of the shooting or remember what she did the day before or any particular act. Some things she remembers—that she was in Kearny Street or in Market Street; that she was off somewhere that day and was very tired when she returned to her rooms that night or that day. That is all she knows. Now, what motive did she have in saying that she did not remember these things? It is a thing that she did not think of—a thing certainly not fixed up for this occasion; questions that were asked her by the counsel on the other side, brought out by him, and she told you, gentlemen, really the honest truth. What motive had she for concealing it? Was it for the purpose of imposing on this Court and jury? Gentlemen, if that had been the object, with her intellect, with

her mind—when her mind is operating and in full vigor—she would have gone around to these places that day and she would have appeared in an incoherent manner to these parties, if she was preparing and laying a foundation for murder and at the same time preparing to feign insanity after committing that murder and had entertained the idea of shooting Mr. Crittenden. She would have gone around to these places; she would have gone around to Mr. Maurice Dore's and her talk would have been so incoherent that she could have told her lawyers to go to Mr. Maurice Dore's and see if they could not swear that when she called upon them she was unconscious of what she was about or did her business bunglingly that day. If she had been preparing this thing that is the kind of foundation she would have laid; if she had intended to feign insanity how easily she could have commenced laying that foundation for a week before the occurrence. Gentlemen, she thought nothing of the kind, and when she tells you she does not remember the occurrence, she tells you the real truth. She tells you that after she heard one of the clerks in the City of Paris store who was on the stand, speak about her looking at a dress, etc., she had an indistinct recollection of going into some places and sitting down to rest. As to the testimony of Mr. Gray and the gentleman who attends to his books, I have serious doubts whether these two gentlemen are not mistaken as to her going there on that day. They heard of the shooting that night and that is what brought it to their minds that she was there at all. Now, if they had heard of it that night as they say, it would at once have fixed it in their minds and they would say, "Why, she was in our store this very day and got a receipt." But no, they cannot tell whether it was that day or one or two or three days before that, that she was there. If it had been on that day and that circumstance of the shooting had called it to their minds immediately, they could not be mistaken about the day; I think certainly not. They produce a receipt that she got somewhere. She tells you that she did get a receipt when she first left the piano there. I believe she did, too, because she certainly is a business woman. Mr.

Gray is liable to be mistaken. As I said, if it was on that day he would remember that fact, that it did occur on the day of the shooting. He remembers that it was about that time; he thinks it was probable it was on the day of the shooting. But I say, if she did get the receipt on that day the fact goes to show that her mind was not in a state of equilibrium.

It was not in that perfectly clear condition that it usually is. She undoubtedly had been thinking of the fact that the family were about to return and very likely she went into the street for the very purpose of occupying her mind and went to Mr. Evrard's to get the sum of five or six dollars and went to Maurice Dore's. She says that she never intended to put the money at interest here at all and Maurice Dore cannot say whether she came there ten days or five or six days before the shooting, and told him that she wanted her money invested.

Now, gentlemen, let us take the time and the place. Would a sane person having a little child to live for and protect and rear, in the moments of sanity under any circumstances commit an act which must at least bring disgrace down upon her for the time being and upon her child? Would she so far forget herself as not only to place herself in that position but to perfect the ruin of that child whom she has so long and warmly cherished? Would she have selected a public thoroughfare—a boat containing and carrying from three to four or five hundred passengers away from the wharf and out in the body of the bay where detection was sure and escape there was none; in her moments of sanity would she have selected such a place when she knew that she must be transported from that spot and be incarcerated in our city prison? Gentlemen, the human mind in its sane moments does not act thus. The human mind in its sane moments, where a person is perpetrating a foul, diabolical murder, will do it in the dark—will select any place except the public streets and the public thoroughfare or public ferry-boat.

With the opportunities she had to kill him whenever she pleased, do you believe that in the moments of sanity she

would have selected such a place and such a time and with her little girl left behind her, with the reputation of a father who had committed suicide and a mother who had committed a bold and open murder? What was her conduct on the boat? I have shown you now the great improbability of a sane person having committed such an act at such a time and such a place and with such surroundings as the prisoner had. Why, did she act and talk, if she was sane, like a person who had been guilty of the offense of murder, particularly if she intended to sham insanity? Not at all. "I did it; I don't deny it." And at one time she remarked to Captain Kentzel: "Let me go and see Mr. Crittenden; let me beg his pardon;" and remarks of this kind: "Where is my little child?" "I have a spell." She was semi-conscious, not wholly unconscious; but conscious one moment, and unconscious the next; semi-conscious and non-volitional. That was the character of the act. In moments when her brain was crazed, laboring under this trouble, she would remember, as you are told by physicians, what she had done in her insane moments; but when restored to absolute consciousness she would have no recollection of these events. The report of a pistol would, as you are aware, re-produce for a moment consciousness. Take all she said, and all she did, at that time, and then follow her to the City Prison; find her with her raving, her spasms, her doing what no sane man or woman would do—taking a piece out of a glass of that character. "But, oh," said the learned counsel, "with what care she bit it. She did not cut her lips! Most extraordinary that she could have exercised such a care in biting a tumbler!" Why, the evidence of one of the policemen is, that one glass she not only bit, but that she chewed it in her mouth. The next day, blood came from her—she expectorated blood. A person feigning insanity would not do that. If they did it once, they would be satisfied; they would never do it a second time.

She could not put herself in a position where, with her natural strength, it would require the strength of two men to hold her down. That could not have been feigned. That is the strength of a madman—the strength of a lunatic—the

strength of a person whose brain is crazed—not natural strength—a thing that could not be feigned.

She loved him. He was the only protector she had left. If there was a motive anywhere, it was to remove the obstacle that stood between her and her future, and between Crittenden and his future—Mrs. Crittenden. If murder was in her heart, she is the person she would have disposed of; she is the only person on that boat against whom she did entertain feelings that would have justified the jury in saying she had a motive for killing. She did feel envious of her. She did feel as though Mrs. Crittenden stood in her way.

Moved by an ungovernable impulse, by an impulse that her intellect could not control—as thousands of others have done before her—she does not stand alone. Case after case could be called to your mind of acts committed by people where they were beyond their control, and were non-volitional. Every man upon this jury can recall cases of that kind, and perhaps you can recall in your own experience, your own daily life, that you have done acts that you could not control. It frequently occurs that people become insane as quick as that, and recover from it with equal facility. Take a case in history, that great, good, sweet, lovable, affectionate, noble being—whom no man can appreciate more than my learned friend, the District Attorney—Charles Lamb, a man who was beloved by all mankind. He had a sister who possessed all the same peculiar characteristics of himself—lovable, refined and intelligent. One day at the breakfast table, without any forewarning, she seizes a knife and stabs her aged mother to the heart, and the mother died then and there. There was no forewarning. Was she tried? No! Every one who knew her and knew her history, knew that she must have been governed by an irresistible impulse, by a great overpowering frenzy of some kind that was unaccountable. That mother died. That daughter, after a while, regained her usual brilliancy of intellect, and wrote book after book after that, but during the balance of her life (she died an old woman) she had those same attacks, and was at times compelled to be confined in a lunatic asylum. But it started as suddenly as I

have told you. No one expected it—conversing and laughing at the breakfast table. And that dear, kind, affectionate brother of hers—God has rewarded him before this—stood by her, and cared for her, and watched over her, through all her years, until he died; gave up everything to watch and guard over that dear sister, knowing what her troubles were.

I say, gentlemen, these cases are not uncommon, not infrequent, and therefore when you come to handle that question, reflect with care, with caution and deliberation. Do not run off into a frenzy; do not be carried away with the popular notion that was so wide-spread through our city on the day of the shooting by the public press, and sentiment they have created for the moment.

I have undertaken to establish the fact that no jury of sane men could, upon the evidence relied upon by the State for a moment, with safety to themselves, with safety to their own families, with safety to the community in which they live, with safety to humanity, to the welfare and lives and interests of men and women, could find a verdict of guilty upon the evidence which has been relied upon by the prosecution for the purpose of procuring a conviction.

I turn now to the testimony which has been introduced on the part of the defense; and by that testimony I propose to show that, whereas, you must have had at least a reasonable doubt upon the evidence upon the part of the prosecution, that no such reasonable doubt even, any longer exists; that your mind must be satisfied, not only beyond a reasonable doubt, but beyond all question, beyond any speculative theory that may be created by the prosecution in their closing argument; beyond any false impressions that may be started here when I have no opportunity to answer them and give my views upon them—that the defendant, at the moment of firing the fatal shot, was not only semi-conscious—that she was not only semi-conscious, but that she was in that condition that her acts, and *the* act with which she stands charged here, was, in the language of Dr. Tucker, “an act of non-volition;” that it was a thing over which she had no control. I say I propose to show beyond all question that such was the condition

and state of her mind when she slew, sacrificed, and killed the only living human being in the shape of a man, on the face of the earth, whom she loved.

The first witness called upon this branch of this case was Doctor Lyford, unknown probably to you, unknown to me, unknown to his Honor; a young man—to use his own language, a self-made man; a man who has studied medicine and worked in chemicals, earning enough through the day to pay a teacher to educate him through the night; a man who has made himself, as he tells you, by hard struggles.

Such is Dr. Lyford, the man who has been denounced here as a professional mountebank, a young man struggling here in San Francisco and struggling among his superiors—old professional men—men who have reputations built up in early days in California; and he is not only compelled to come here and give his testimony but he must have that sting, that terrible phrase cast upon him by the leading counsel, Judge Campbell, that he is a professional mountebank. Was that treating Dr. Lyford in a spirit of fairness? Was it proper for the prosecuting attorney in this case to pass over the testimony of a physician by calling him names without discussing to you as intelligent men his evidence and the character of his evidence? He told Judge Campbell that he prescribed for A. P. Crittenden, and what his prescriptions were for the defendant and directed him to the druggist and apothecary who put up those prescriptions. Why did not Judge Campbell instead of indulging in these wholesale remarks go to that druggist, that chemist, that apothecary and call him here and find out whether Dr. Lyford had lied or not? Oh, gentlemen of the jury, the counsel does not meet the facts. He undoubtedly went to that druggist's store and found that everything that Dr. Lyford said was true and would be corroborated if he called the druggist. He starts out then, endeavoring, gentlemen of the jury, to have you discard and discountenance and give no weight, no effect to the evidence of Dr. Lyford. It was important for the counsel to get rid of him.

Counsel says that Dr. Lyford came here with a dictionary

or had studied a dictionary for large words. The doctor did say that he would probably make use of medical terms which would not be thoroughly or fully understood by the jury; that they would not be supposed to understand all the terms that he might use. Then he went on and whenever he came to a term of that kind, explained what it meant. There are words made use of by physicians which, to convey their idea to a medical man, must be used, and no other word would express the idea to a medical ear or a medical mind. "Insomnia" expresses of itself to a medical mind a certain condition of want of rest and sleep; "insomnious," or "insomulous," would express a different condition.

The word *enemic* is used, and that I believe everybody who understands the English language understands to mean a weak and impoverished state of the blood. Then he uses "retrocedent gout." Everybody knows that that means a gout that is changeable, movable from one part of the body to another. "Metastasis" has exactly the same meaning as retrocedent. He has spoken of nervous irritability. I do not think the doctor stated anything down to this time that we do not all understand.

Judge Campbell told you in his argument that at the time of this shooting there was no pretext that she had any difficulty by reason of her sufferings from one of her menstrual periods. Here is the evidence of Dr. Lyford that she was then suffering from retarded or suppressed menstruation which had existed up to that time. And then he speaks of "surrounding circumstances." Mark that as you go along. "Her condition at other periodical times, depended greatly upon the surrounding circumstances." Take the circumstances surrounding her at the time of this fatal shot. A woman, naturally nervous, not only had brought to bear upon her a sudden shock, but a woman diseased and suffering from twelve days' retarded or suppressed menstruation. What, in the name of heaven, can you imagine, or will you undertake to say, was the effect produced at that very moment?

Is he a man who has come here for the purpose of swearing this case through?

Has he shown a desire or eagerness to overdo this case, or does he, like a reasonable physician, state what the natural conditions of patients would be under those circumstances, and what might be expected from them? He says that three weeks prior to this shooting she was particularly suffering from nervous enervation. Caused how? Caused by a want of sleep; and you all know from your own experience how the loss of sleep will operate upon your own mind; that when you continue it for any considerable length of time, how perfectly unfitted the strongest of you are, being perfectly healthy in every other respect, from performing your daily business. But she had, combined with this want of sleep, a restlessness—that organic disease of the womb described by Dr. Trask, which was constantly preying upon her brain, which affected the mind, and the operation of the mental functions and mental power. This, gentlemen of the jury, was her condition for three weeks prior to this shooting. Her blood was impoverished—almost without circulation. That, with the enemic state, together with the surroundings of the moment and prior to the moment of the shooting, the trouble of her mind upon the subject of Mrs. Crittenden's return—all calculated, at any instant of time, like a flash of powder, to craze her brain, cloud her intellect, and cause her to do any kind of an act.

A few days before the shooting she was in that condition, that she tore her hair and screamed, but on the day of the shooting he says she was in that enervated state, although as you see he advised her that it was proper for her, even when she had no inclination, to go out and take the air and take her walks. She seemed, after the shot was fired and after the report of that pistol—which would to a certain extent, as Dr. Tucker tells you, restore consciousness—to understand her condition and call for drops—the drops her doctor gave her when she had such spells. Would a woman call a doctor and run up a needless bill unless there was a necessity for it and is there any other disease or pretense of any other disease except that that he speaks of, nervous irritability, a disease of the womb, anteversion of the womb, which Dr.

Trask and several other doctors say is common even to virgins? Where, then, is not Dr. Lyford corroborated by Dr Trask? Have they called a single physician or attempted to show that his treatment of her as physician at that time was not the proper treatment? No, they dare not. He knew his business; he did his duty.

Gentlement of the jury, would that doctor have remained at the city prison as he says he did from 11 or 12 o'clock at night until 6 or 7 o'clock the next morning unless that woman was in a very critical condition?

Now, what is Dr. Lyford's evidence? That he attended upon this lady from the nineteenth of December, 1869. He found then she had a slight attack of gout that soon disappeared, and also had diseases and troubles of the womb. Her menstrual difficulties continued from that time down to the present day. She was sleepless, troubled with headaches; at every one of her menstrual periods she was more or less excited. She could not endure anything or anybody. She was finding fault with everything; and, to use an expression of the doctor, "everything went wrong with her." Ask any physician who was watching upon a patient laboring under an excitement of that character what she said? Is a physician who calls upon his twenty, thirty or forty patients a day to recollect what each person says in a particular unconscious state of mind, and tell you, the jury, upon the stand everything she said upon particular occasions?

Can he do anything else than say that her mind was generally disordered; that she hadn't that equilibrium that she had on other occasions when these turns were not upon her? Can a physician go beyond that point? You find, if you believe Dr. Lyford, a woman physically suffering from a disease only known to the female sex, a disease that is liable to attack them at any time, and the consequences of which can not be foreseen by medical men. That this disease was upon her for eleven months before the shooting, physically ailing, an enemy impoverished condition of the blood, weak, enervated, sleepless, unable to get the reasonable and usual amount of sleep that is necessary to protect the brain and

protect the system. She was very excited; at one time blood is pouring from her, and she screams from pain. Three weeks, he tells you, that she was in this terrible condition before the shooting. Three weeks he was compelled to give her medicines to produce sleep; without natural sleep! Imagine, then, the condition of this woman—suffering from twelve days' retarded menstruation, with the effect that this must have had upon the human brain, kept there for twelve days, and that that blood is blocked up in the system, and rushed up upon the brain; with that blood so blocked up in the human system, without the natural discharge, or some disappointment, something terrific has its effect upon the mind of a party thus circumstanced.

Cannot you imagine how quickly reason can be dethroned? The mind becomes unconscious and the party commits an act insensibly, non-volitional, without reason to direct the blow, or reason to withhold it. I shall show you that Dr. Lyford is corroborated in everything by Dr. Trask, that he has not stated a word but what Dr. Trask corroborates in him. And now I shall show you that Dr. Tucker and Dr. Dean give the same opinion that Dr. Lyford has; Dr. Trask speaking from a knowledge of her system, of her peculiar ailings; and Dr. Dean with that medical eye which he has, could see the character of the disease that had wormed itself into the constitution of the defendant. Dr. Trask visits her daily, sometimes three and four times a day. Did he go there for pleasure or because he had nothing else to do? He tells you that her sickness required his attendance every day that he went there. This continued right straight through from the time he went there on the 30th of December, that it was necessary for him to visit her daily and sometimes he spent hours with her there in that jail trying to quiet her and attempting to reason with her as a doctor has to do with a woman under these circumstances—consoling and questioning her, and he tells you that it was seldom that he spent less than two hours there.

He tells you in his first testimony here, that she had organic local troubles. He never had made a personal examination

at this time, and when he afterwards comes to examine the womb, he finds the conditions to be exactly as he thought they would be, from what he had been informed and had observed, and that the trouble was not of weeks or months but, he says, of at least a year's standing.

April 22.

Judge Campbell stated that these physicians gave their opinion upon an entirely hypothetical case and unless all the facts were used the opinion is not reliable. You will find that in the case of Dr. Deane he gives his opinion not upon the relations of the parties at all, but he gives his opinion from the character of the disease as described by Dr. Trask and the manner in which she acted and what she said at the time of her arrest, facts which are undisputed. Dr. Trask in the diagnosis he has made of the case depended upon the symptoms alone. He found, when he had made personal examination, the womb in exactly the condition he supposed; that the disease he found was chronic in its character and as he states, having existed for years.

Many a poor wife has suffered from abuse and scolding received from the husband because he did not understand her real condition, who attributes her actions and sayings and doings to something wrong; whereas she was in a condition of mind that she was utterly incapable of withholding the expressions she made. We hear her fault-finding, desiring a new dress, and saying that she is not as well cared for as her neighbors, or any little peevish thing, that probably, when you look back, you find has occurred in your own family, and you could not have accounted for it unless you had known that the female was subject to this peculiar condition.

Judge Campbell, in his argument to you, undertook in a very eloquent and effective way, to have you believe that, because Mrs. Fair had possession of her mind while she was on the witness stand, that she could not have been insane; or in other words, that her mind could not have been clouded at the instant of the firing of that fatal shot. I answer that, first, by saying that there is no pretext, has never been any pretext in this case, that the defendant is insane now; that she

is unconscious of what is going on. Her mind was clouded, her reason obscured, her mind utterly unconscious, at the moment she fired the fatal shot.

Take the case of Cole, for shooting Hiscock. A man of intelligence, intellect, brain; a man who, up to the very instant of firing the shot and instantly after the shot was fired, was as sane as he ever was in his life; a man who had procured a pistol at Syracuse and taken it to New York, had traveled to Albany in the cars with that pistol on his person, meets Hiscock and shoots him down. Sane all that time, the jury say; sane when he started with the pistol, sane when he met Hiscock, but insane the moment his eye was fixed upon him and he fired the shot; perfectly sane the moment the shot had been discharged. Must you be told, then, that because this woman to-day has reason restored; because that cloud has been removed from her mind, like the cloud that obscures the sun or the moon for a moment, and again removes itself, and permits them to shine forth with all their former splendor and brilliancy; are you to say that because to-day she is not insane; that because she is not a confirmed and total lunatic; that because she is not forever deprived of her reason; that because she is not a fit subject for a lunatic asylum; that because she is able to come here to-day and detail the story of her wrongs—that that proves that her mind was conscious at the time she fired the fatal shot? Gentlemen, the learned counsel begs the question in the case; he does not meet it and discuss it. He calls your attention to a fact which will exist, and may exist, in any human being; the fact that reason is restored.

Then, in addition to that, with that reason restored, we find that while she is giving her testimony on the stand, she is under stimulants as strong as they dared to administer to a human being. Why? To give her strength; to keep her up; to keep her from sinking down and wilting—incapable of attending Court; to keep her from reclining upon a sofa or upon a bed, as she did day after day in the County Jail, before the trial commenced.

Gentlemen of the jury, with her intellect, with her mind

stimulated, as it was by exhilarating drinks and powerful medicines, can it be wondered at even, if sitting here, as she did in her chair, she should give expression to outbursts of indignation or outbursts of her own mind, when she supposes a wrong is being done to her? Is it strange that she should occasionally, when on the witness-stand, say something that was not in answer to the direct question, when her mind was full of her grievances, running through a series of years, and that occasionally, and only once or twice during the entire examination, she should have forgotten herself, and made expressions of the kind she did? Is it strange that this lady sitting here, and hearing what, to her at least, and what, according to her recollection, she did not believe to be true, when Mrs. Crittenden was on the witness-stand; that she should have exclaimed, as she did on the impulse of the moment, "That is a lie"? Is that strange, when men old in the practice of the law, men who have been at the bar of justice trying causes for twenty-five or thirty years, so far forget themselves in the heat of debate as to make use of remarks to the Court, or counsel to one another, which within ten minutes after they have made them, they regret?

I do not blame Mrs. Crittenden. She has my sympathies. She comes here feeling as any woman of spirit would feel; under the supposition and belief that the defendant in this case has done her a great and grievous wrong; she comes upon the witness-stand with feelings of that kind, and when she sees the person before her whom she believes shot down her husband in cool blood, who had cost her many a day of grief during his existence upon earth; when she sees that woman before her she feels, what I believe every human being would feel—she feels vindictive; she feels as though she had done a great wrong to her and to her family. I therefore, gentlemen of the jury, say that she did nothing more than any woman of spirit, any woman of sense, of susceptibility, any woman of strong feelings or strong passions, would have done similarly situated. But, gentlemen of the jury, treat the witnesses alike. She states that Mrs. Fair, after she left the dinner table, came to her room, where she was reclining upon

the lounge, and took hold of her hand, and said she had not received a kind word from any woman for ten years, and begged leave to kiss it. And Mrs. Fair says, "That is a lie." Gentlemen, to show you how conscientious Mrs. Fair was on that point, that at least she believes what she said, she goes on the stand and gives you her recollection of the conversation.

But let us look for one moment at the evidence. For ten years, says Mrs. Fair, I have not had a kind word from a sister or from a woman. Gentlemen, that was in 1864, carrying Mrs. Fair back to her girlhood, to the age of sixteen or seventenn years, and in that time she is made to say she had not heard a kind word from any living woman. She had been married to Colonel Fair, went into society then, (and it was in 1861 he died) so that within three years before this time she was respected as the wife of Colonel Fair, and did undoubtedly receive kind words from her own sex. So that Mrs. Crittenden must be mistaken. She could not have said it with any degree of truth or propriety.

We have Dr. Trask's opinion on all the evidence based upon his own knowledge of the subject. He has besides given to you a reason for that opinion. He has explained to you carefully, thoroughly and fully why he says she was in an insane state of mind at the time she did this fatal act. Gentlemen, would you not think me very lax in the performance and discharge of the sacred duties on my hands if I had not resorted to medical gentlemen to advise me on the subject over which they are masters? And is it not the doctor who had her in charge, who knew her exact ailments and ailings, the physical troubles of the woman—is not he the man above all others for me to consult so that I might get at the true facts of the case? so that I might ferret out the facts as they exist here? Would not Dr. Trask have been criminally negligent or criminally wrong if when I applied to him to aid me in this particular, he had refused? He has consulted with and assisted me to put my mind in such a condition as would render me fit to conduct this case in a manner in which it should be conducted, so as to bring before the Court and jury the true

state of the case. And I have consulted medical works; and I have asked him as to what are the best medical works I could consult, and he has been very kind to me. I have asked the doctor to frame questions for me because I might not get the proper words in putting questions to a physician and I told him that when he came to answer me he must answer the question just as I put it. He did frame questions for me, he gave me the theory on which to frame questions and suggested that the examination should be conducted on this theory or that theory. Gentlemen of the jury, if I had not done that and if Dr. Trask had not consented to assist me on such an appeal in doing these things, I would have thought very little of him as a man and less of him as a physician.

Judge Campbell remarks upon how well she could travel around that day of the shooting without any manifestation of insanity. Was that anything strange? Women laboring under these difficulties are not always in a state of excitement; they are not always violent. These fits of excitement come and go and they are developed in different ways; sometimes it will be an excessive laughter, sometimes it is in singing, sometimes in being foolish and silly like a child and sometimes in fits of violence. Mania exhibits itself in a thousand ways, in as many as there are different names for mania. A person troubled as Mrs. Fair was with retarded menstruation, may be quiet this morning, mild and not at all excitable and in two hours she may be a demon—wild, excited and perfectly uncontrollable. In an hour it may subside; the acute pain may be relieved and an hour after it may appear again. And so it may continue during the period of suppression of the menses.

By the testimony of Dr. Trask, it became necessary for him, from the condition in which he found her, to visit her on an average once a day and to spend with her on such visits from one to two hours at a time. During the entire period of which he speaks her blood was impoverished, her condition very low, indeed—difficulty in menstruation always existing. At moments of menstruation she was greatly excited; things

went wrong with her. She would use extravagant and sometimes violent expressions, and these expressions, remember, gentlemen of the jury, were confined to those particular periods of time. During each interval she was weak, reduced, scarcely any blood left in her system, but sensible. She made threats in the moments of her delirium, that in case the subject of insanity was testified to or broached on the witness-stand by her mother, she would murder her. That is, hereditary insanity in the family.

During a short period or during the attendance of Dr. Trask, she had a most voracious appetite. At other times she ate scarcely anything—had no appetite. The doctor says it can only be explained on one theory, trouble of the brain. It is not really for the want of food, but it is desire, a longing for something brought about by the peculiar nature and character of the disease at that particular period. The immense amount of food she took during that period did not exhibit itself in her condition or in her bodily appearance. It therefore did not act upon her system of nourishment. We find another most remarkable fact, that is the condition of her eye. This is something which Dr. Trask and Dr. Lyford tell you cannot be forced or brought about by the act of the patient. Dr. Trask tells you this was an unnatural condition of the eye; it was not produced from natural causes; it was not produced from the effect of light upon the face. It was produced by reason of a defect or derangement of the brain. He tells you that that eye was reduced down to the size of a small pin-head—the pupil of that eye, or those eyes, were so reduced down to this size. Indeed he says it was so reduced at one time that it was scarcely perceptible.

He tells you that he made an actual examination and inspection of the womb during the progress of this trial. He told on the cross-examination why he had not made a personal inspection before. One reason was that he was there for two weeks simply occupying the position of another doctor, there simply for that purpose, and that doctor had told him what he had found out in the case and what he had done. You know enough about medical men to know that

when one medical man goes in to assist another, even to advise with him in regard to a patient, he relies on what the regular attending physician tells him in regard to the symptoms in the case or in regard to any matters that had been examined into carefully. Dr. Trask took what Dr. Lyford had told him upon the subject of the examination of the womb. It would be folly for him to make an examination; he knew the facts as well as if he had made one. And another reason he did not expect to be in attendance there over two weeks. And from day to day after the expiration of that two weeks he expected the return of Dr. Lyford; but he did not return for two months. Another reason was that the condition of the patient was such that he thought it was not advisable to make an examination of that kind at that time. He tells you, however, that he did make one during the trial; and he tells you how he found the womb and its condition; a chronic disease of long standing. And he tells you that at the time this woman shot Mr. Crittenden there was a chronic condition of the womb.

Dr. Trask then tells you what might be expected at any moment from a woman laboring under the many difficulties and troubles and diseases which he found to be existing in this case; not only existing but firmly seated—chronic, never to be eradicated. He tells you that she always had troubles at her regular menstrual periods; that she also had and would even suffer from retardation from those periods. Imagine the disordered condition of this woman! Five menstrual periods in ninety days! Prior to that she had had a suppression of six days. He tells you whenever those periods come about her brain was necessarily more or less affected. He tells you that a woman suffering under these troubles might be liable to commit any act. There is no telling what she would do or would not do upon any excitement; anything that would suddenly fall upon her to cause a sudden excitement, or something that she saw suddenly that she did not really believe or expect to see; or something she saw to which she would under most circumstances take exceptions.

First, Judge Campbell in his argument lauds Dr. Trask

as an able, an upright, and an honorable man. And then he tells you that after he became retained—that is the word, “retained”—he came upon the witness-stand and swore to a falsehood.

Gentlemen of the jury, there is no hope for this prosecution, or its success, except by the disposal of the witnesses, who have been called here by the defense, one by one, in that summary manner. They say no person called here by the defense is to be believed. This unfortunate lady, in case of a physician, who knows all about her case, and has attended her, must lose the benefit of his testimony, because she calls him upon the witness stand. In the name of God, whom should she call? Whom can she call upon except her attending physician? And I would appeal to any man who knows him, to his Honor upon the bench, to any medical gentleman in this City of San Francisco: that there is not a more upright, careful, correct, just, honest, honorable man in our community than he. In point of ability and professional skill it is universally conceded that he is equal to any. If there had been any doubt on that question, gentlemen, you have listened to him, and the manner in which he has given his testimony, as well as to Dr. Lyford. Has he talked like an *ignoramus*? And, gentlemen, out of four hundred practising physicians in this city, the prosecution dare not put one man on the stand for the purpose of attacking the testimony of Dr. Trask and Dr. Lyford. Not one professional man dare they call for the purpose of proving that Dr. Trask has not stated the character of female diseases, and the results, and their action upon the mind and upon the brain, correctly, and as he says in his evidence, as recognized throughout the world by all medical men. Yet, gentlemen, an attempt has been made here by Judge Campbell to cast a slur on the testimony of this good and just man; the man who has been faithful; and he should be rewarded for attending as he has to the case of this unfortunate woman.

Dr. Lyford could not be induced to come back and stand by the task of attending to this patient as she deserved. But you find this old gentleman always at his post; always

on duty, and he has watched her and carried her through the ordeal of this trial nobly, and may it be said to his credit, properly.

Without a physician, gentlemen of the jury, you would have had nobody here to try. But for Dr. Trask's care, and great care, in watching every symptom and building this woman up degree by degree, as rapidly as he could, to-day the city of San Francisco would have no prisoner to try—she would have bid farewell to all earthly things. Nature itself, exhausted nature, would have prostrated her, and she would have occupied the cold and silent tomb before this case was brought to trial.

I wish now to call your attention to one very significant fact in this case, and what is it? Mrs. Fair tells you that she went down there for one purpose. What was it? When Crittenden came to her room on the afternoon of the day of the shooting, he wished to kiss her; she declined; now bear this in mind, because it is important. She says to him, "I can not kiss you; you will soon be kissing the lips of another person." Mr. Crittenden then assured her that he should meet his wife merely as a matter of necessity; that he should not meet her in that warm and affectionate manner; that he would not kiss her. Gentlemen of the jury, what did she go to that boat to see? She went there to see whether or no Mr. Crittenden kept his word; whether he really meant what he said, or whether he really at that time would meet and embrace and kiss his wife. That was the great point that engaged her mind; that was what she went down to witness—as Mrs. Marillier tells you—to see that meeting. That was why she threw a veil over her face, that Mr. Crittenden would not know that she was present; that she could see the meeting, and see whether he embraced, and fondly embraced, caressed and kissed his wife at that particular juncture and time.

Does Mrs. Crittenden pretend that Crittenden had done the very thing, and the only thing that was uppermost in her mind, kiss his wife upon that meeting? No. Did Crittenden make one solitary single advance which would evidence, or carry to her mind the idea that he met her affectionately,

that he met her as a long departed and long separated wife from him? The evidence is directly the reverse; the only thing she saw, the only overture that was made in her presence, and at the time the fatal shot was fired, was the overture by Mrs. Crittenden herself—by placing her arm through the arm of Mr. Crittenden. Had not Crittenden kept his faith, had he not done what he had promised Mrs. Fair he would do? Had he kissed her, had he caressed her, had he even fondled her, had he even embraced her, or taken her arm? No. Then, gentlemen of the jury, the only thing she went there to witness, the only thing about which her mind had misgivings, the only thing she feared when she went to that boat, that is, that Mr. Crittenden would embrace and kiss his wife—did not occur.

The only thing that would have tempted her from anger, from passion, from uncontrollable passion, to fire the fatal shot, did not occur. Mr. Crittenden sat there as cold as a stick towards his wife. No expressions of gratification upon seeing her; none of the usual salutations and the usual ceremonies upon the meeting between man and wife who had been long separated, nothing occurred that she went there so closely to watch. In the name of Heaven, then, why should she have shot him down when he was keeping intact to the very letter, the very word, to the very promise he had made her when he had last parted with her—everything that he had said in parting? That of itself shows that she was not disappointed—Crittenden had not deceived her; Crittenden had not violated his word—the only overture was by the wife. She placed her arm in Crittenden's arm, and then, gentlemen, her brain was whirling, and twisting, and reeling, and racked, to see them in close proximity. She knew not where she fired, or whom she hit. She shot the bosom friend, her bosom friend—at least one she considered as such; her only protector—her protector here upon earth. Gentlemen, do not think that I am extravagant when I make these expressions. I care not what their earthly relations could have been in the eyes of man; I am talking to you now about them as they both felt and acted—the impulses that governed them then and there.

Gentlemen, no man in this Court room regretted any more than I did that she should have made the allusion that she did to my old and esteemed friend, Judge Campbell; but you must consider, as I have told you this morning, her situation and her condition. It was there and here, and must come out: "Judge Campbell, kill him, shoot him, and murder him! My God! would I murder the only protector I had upon the face of the earth? And you Judge Campbell, if he were here to-day, and had heard the insult you had passed upon me he would make you, sir, get down on your bended knees and apologize to me for it." It came from the instinct of a heart believing it, thinking at the time what a great protector he was to her; of the dependence, the reliance she placed upon him, involuntarily coming from the heart when she heard Judge Campbell say, in his argument the day before, that this was placing the mistress above the wife. She could not imagine, and cannot to-day as she sits here, imagine that she was a mistress.

She knew Crittenden, she knew him well; she knew that when anybody had dared to cast a suspicion or an aspersion upon her or her conduct, that Crittenden came to her relief, as she tells you in the Russ House, he made the proprietor of the Russ House and the man who started some report about her, come into the room and sign a retraction in writing which Crittenden himself wrote, retracting and denying that he had ever made an assertion of that kind. Why did they not call Mr. Pearson of the Russ House or that man she referred to if they wanted to contradict her? Gentlemen, she feels that he has gone, she feels that she no longer has an earthly protector and if God will give me strength and sustain me, I will be this poor woman's protector until the last syllable of recorded time. I will stand by her notwithstanding any outside rumors that started against her before this case came up for trial. I will here, like a brother lawyer, represent the man who is in the grave and whose mouth is closed; and I am here today as her protector and God give me eloquence and power of speech and ability to convey to

you, through me, the true position of the state of her mind at the time she fired that fatal shot.

Dr. Tucker, like Dr. Deane, testifies that he does not care anything about the relations between these parties, but he gives his opinion upon the disease itself. He tells you the report of that pistol itself may have aroused her and brought her, the moment it was fired, to consciousness.

Dr. Tucker certainly was not a retained Doctor. He was not brought here for the purpose of testifying from sympathy, affection, or from his feelings having been particularly engrossed upon this case. He was called here from his ordinary duties, and in obedience to the mandate of a subpoena, was compelled to come here and testify. He has corroborated Dr. Lyford and Dr. Trask, in everything they have said as to the effects produced upon the mind and the brain by the disease which both of those gentlemen have described to you as existing in the defendant. He tells you that in the majority of cases he had in his own asylum of female, insanity was produced from causes and effects of this character, and I have no doubt that if you were to go through the insane asylums of the world—like our insane asylum at Stockton—wherever you might go you would find a great majority of female patients incarcerated within those institutions whose insanity was produced by reason of sexual disturbances, sexual irregularities, disturbances of the womb, disturbances of that peculiar, sensitive, incontrollable and unaccountable organ of the human system. the female system.

Dr. Deane, a man I have never spoken to but once in my life until I addressed him here on the witness-stand, told you that he never had conversed with me about this case at all. Relying upon the intrinsic merits of my case, upon the honesty of a physician, I went down to the institution and selected a man who is now the head of a female institution in this city and county who makes female diseases a specialty. I examined him here, a stranger to me, and put him upon the stand, not knowing any more what his answers would be to my questions than you know what the next sentence of my speech would be.

Dr. Deane tells you of a very recent case here of a woman in this condition, where it happened that he, in going to see her, arrived only just in time to prevent her wringing her own child's neck. Now, gentlemen, there is a case right before you. "This morning," he says—and brings it vividly before you all. Why, gentlemen, suppose we turn the tables on them in this case; suppose that instead of Mr. Crittenden having been the man who was shot that night, this defendant murdered that little child of hers. Would you hesitate a moment in discharging her? Would you say that she could have killed that little girl maliciously and premeditatedly, with malice aforethought? Suppose she had slain her mother, and this evidence had been introduced before you, would you think of leaving your seats without acquitting her? Do not, then, distinguish in this case because a great man has been slain. Do not let your minds be led away from the true path of inquiry, but take it right home. Take the very case; take the same person with the same evidence. Suppose she had shot Dr. Trask inside of the walls of that prison, would you say it was murder on the evidence before you? Would not you say the woman was insane? Take it and illustrate it; bring it right before your own minds, and your own hearts. Why does Mr. Crittenden's being a great man make a difference? That is a question that no man on that jury and no other man within the hearing of my voice can answer. It is a parallel case. Love and affection—motherly love and affection—and all the feelings of her heart are entwined about that little child; love, affection and all her hopes of the future; all her gilded prospects were built upon and centered in Mr. Crittenden as to the happiness of that future. He was the idol of her heart, the man she looked upon for years as her sole protector. What is the difference, I say, whether she shot or killed her own child or her mother or sister or any other near and dear friends or whether the fatal shot lodged in Mr. Crittenden? Take that to your jury room and reflect upon it and I have no fear of the result of your deliberations.

Dr. Dean tells you that she was evidently laboring under hysterical mania at the time the shot was fired. I asked him

what was the condition of her mind, and the reply was, "utterly unconscious." You have the evidence here of a man who has made this matter a specialty, that in one-third of the cases in which women have these menstrual difficulties they would produce insanity; and probably three-fourths or two-thirds of all the women have them and in one-third of these it would produce absolute insanity. That is, momentary insanity for the time being.

Judge Campbell asked Mr. Deane a hypothetical question as to whether if such and such were the case—really asking for a legal opinion—he did not think it would be murder and the answer was, "Allowing the woman to be perfectly sane, I would suppose so."

Dr. Deane states that he cares nothing for the relations between the defendant and Crittenden, and that is not a medical question. He discards all these other surroundings as you will do, and as it is your duty to do.

Now, bear in mind, when Mr. Byrne comes to close this argument, that there is no pretense here that this is an insane woman, any more than that Cole, who murdered Hiscock, is to-day insane; no more than Sickles, who slew Key, is to-day insane; no more than Gunn, who slew his victim two or three months ago in San Francisco, is insane. We say further, that at the time, at the moment, at the very instant of shooting, she was unconscious, moved by an irresistible impulse—not a self-agent. The act was non-volitional, partial insanity, not permanent, but lasting, as with Cole, and Sickles, and Gunn, only for the very identical moment of the shooting—one second; lasting with her before, and certainly for three days after.

Dr. Deane states to you that he does not care anything about their relations. You see how utterly immaterial all that matter is here upon the real issue you are trying. Whether she was the purest woman that ever lived, or the vilest who ever lived upon the face of the earth—whether Mr. Crittenden was the purest man who ever existed, or the lowest and most degraded, had nothing to do with the question of her disease. The thing which was uncontrollable, the thing that

forced her to the act, without any voluntary act on her part, and without the will and intent which is so important in cases of crime—could I have called a more conclusive witness than Dr. Deane?

Counsel in his opening undertook to read to you a very short paragraph upon the question as to the reliability of the testimony of professional gentlemen. And he did broadly assert that it was the weakest evidence that could be introduced into a court of justice. Gentlemen, experts of the present day have become so common upon every branch, almost on every subject that comes up in the courts, that it has led the courts to make remarks of that character. But if one of you should go to his home this evening, and find your wife or one of your children in intense agony, who would you apply to to relieve that suffering? Would you not go to your doctor who is skilled in diseases? Would you not send for him, and ask him to come to administer to that child, or that wife? If a question of law was to be interpreted or passed upon, and experts would be called upon that question, would you, if you were upon the jury, rely more upon the evidence of the professional experience and knowledge of the lawyer of ability than you would upon your own opinion? If you were on trial for a crime and you had been suffering from some kind of disease for months, or perhaps years, would you believe, or expect that the jury would be so well satisfied as to the consequences or effects which that disease might have upon you or your actions, from any source, as they would from a physician who knew the character of your disease—who knew the effect produced upon the brain and upon the mind? Where shall we go for evidence to give us the effect produced by disease upon the human mind, unless we go to the very fountain of science? We take those who have made it a life study, call them and place them upon the witness stand to tell you the result of the disease upon the mind. We have taken the entire medical faculty of San Francisco and I say we have the evidence of every single doctor in San Francisco upon the subject, because they could not find one to gainsay it—that this woman was laboring under a disease which renders

her at any moment, or any instant, liable to be a fit subject for the insane asylum. Talk to me not about your extracts from law writers, that evidence of this kind is not competent or important. If the books were blank upon the subject I would appeal to the human understanding; I would appeal to the good sense and the common understanding of every man, whether you could be informed upon the trial of the case or could have been informed as to the secret workings of this woman's mind, except through the assistance of the evidence of scientific gentlemen.

No, gentlemen, it is the kind of testimony that must be introduced. It is the only evidence upon which you can rely. But you take experts upon a thousand other subjects, upon a question of handwriting for instance, and you will find perhaps twelve upon one side and twelve upon the other. One side will testify that they have known the man for years, and know his handwriting, and they do not believe it is his; twelve more will swear they believe that it is his. That is not a question of science; that is only a question of judgment from observation. There are experts upon a thousand different subjects where the law of experts, in my opinion, should be entirely abolished and wiped from the records of the law. I would sooner leave the question of handwriting, as we did the books here, to the jury, for them to examine and decide, than to call experts to give their opinion upon it. But when we come to approach and walk into the unfathomable depths of the human mind, the workings of a particular disease upon that mind, then we step beyond our knowledge; we go outside our limits of observation, our power to judge, our power to reason; we have no predicate, no foundation from which we can start, or from which we can draw a just and proper conclusion. It requires the man of science to do that. Therefore, gentlemen of the jury, we have introduced medical gentlemen upon a case that none but medical men can properly place in its true light before a court and jury.

April 24.

There are cases of insanity or supposed insanity on the part of men where the physician and professional expert has to

judge simply from the appearances, actions and words of the patient. These are the cases, and these are the only cases in which you find medical men differing when they come upon the witness stand. But here we have a case which is an exception to that general rule. We have a case of a female who has a disease which is known to the entire medical fraternity of the world; a disease about which there is no dispute. The consequences and effects of that disease produce almost universally the same thing; always more or less disturbance of the mind and interference with the equilibrium of the mind and the fair and reasonable workings of the brain. Hence the prosecution have not called any witnesses. Why? Because it is one of those cases—a class of cases about which two physicians cannot differ. I do not care where they go for a respectable physician; two cannot differ upon this proposition. Go right through San Francisco, the State of California, New York, the Union—the world; call physicians from all the different hospitals upon the facts of this case; upon the diagnosis made and explained to you by Dr. Trask, the nurse, by Dr. Lyford; her physical condition, her nervous temperament as seen at a glance by Dr. Dean, and I say, you cannot find two physicians in the world who would say that at the time the fatal shot was fired by the defendant, the great, strong probability was that she was unconscious of the act she was performing, that it was non-volitional; that it was an impulse over which she had no control. This is the reason why witnesses have not been called on the part of the prosecution. They could find none.

Mrs. Morris went to Mrs. Fair on Saturday, at 12, the shooting having occurred on Thursday night. From the time she went there on Saturday until Sunday she was utterly, perfectly and totally unconscious and insensible of anything and did not know Mrs. Morris, and to use the language of Mrs. Morris, she does not think that she saw her. If the testimony of Drs. Lyford and Trask is true she probably did not have the use of her eyes at that time, the pupil of the eye being almost if not completely closed.

During Saturday night, Dr. Lyford having been there and

having left medicines with directions how to administer them, she undertook to administer medicine to quiet her, she having become excited, spasmodic and almost uncontrollable. She says that her limbs were perfectly stiff—not her hands, not her arms alone, that she could not stir nor move them. Her mouth was closed. She says she took a glass that stood there and poured out the medicine and put a little sweetening in it and put her arm around her and brought that glass between her teeth until she got her mouth open and pushed it in her mouth as far as she dared, for the purpose of giving her the medicine. The glass cracked and fell, and she found a piece bitten out of it.

This was not a voluntary act on the part of Mrs. Fair. She could not have assumed this rigidity, and all these things. That could not have been done. She had not then the strength of a human being, but the strength of a maniac, as Officer Sellinger tells you, and as Mrs. Morris tells you, it took three to hold her. She finally threw that medicine out—did not swallow it. She knocked for somebody to come to her assistance. Douglass came into the cell. Douglass describes her as Mrs. Morris does. Douglass had seen her bite a glass before that.

At twelve o'clock Dr. Lyford came and succeeded in getting medicine down her, but it was two hours before he could quiet her at all. She then fell off into a sort of dreamy sleep. But you can well imagine her condition when Mrs. Morris tells you that the doctor remained there with them until seven or eight o'clock the next morning watching her symptoms.

Mrs. Morris tells you that on Sunday she seemed to have a little idea of reason, and asked her for a glass of water. She gave it to her. Mrs. Morris tried to get her to take a little broth which she had prepared, but she would not take it—said it was greasy. She sent out for some strawberries. She said Mrs. Fair thought, perhaps, she would like something cooling for the mouth. She took but two or three of them in her fingers. On the following Monday or Tuesday, her mother came to her from San Jose, where the little child was at school. The mother came to her, and went up to the bed, and was in

apparent conversation with her. The mother came after that every day while she was in the City Prison. One or two reporters came also, and appeared to be talking with her. We have called those reporters, and they say that they did go up to her, but she was unconscious, and they could get nothing from her, although in her murmuring she said, hearing the reporters were outside, "bring them here, for I want to see them." The nurse tells you that she was then in a state of unconsciousness, with occasional intervals of reason; and, as Dr. Trask also tells you, until the following Thursday, when her reason seemed to a certain extent to return. Now, bear in mind what she says before this, and after her reason to a certain extent returns. She asks Mrs. Morris: "Are you a married woman?" the first time she has really talked to her. "Yes; I am a widow—a widow, indeed," and so forth. You will remember Mrs. Morris' testimony on that point. And she then, after talking a moment, goes off into her "moanings" again, to use the expression of the witness, and returns to that same condition in which she had been before. These flashes of reason would come, as I said a day or two ago, like the sun emerging from a cloud which had obscured its rays and its brilliancy; and another, and another cloud obscures it, and all the brilliancy disappears. So her rays of reason would disappear and appear at intervals. She would speak, and apparently recognize all around her, but instantly, almost, the cloud would again come over her mind, and she would return to her state of unconsciousness again. This was her condition, she tells you, and so it continued, gaining gradually until she went to the County Jail the second Monday after she was called to attend her. She remained with her in the County Jail night and day constantly watching her every movement, watching her every symptom. She tells you during these times that this women was not in her right mind. She tells you that up to almost the last of the eight days she staid with her night and day, she had those spasms and those returns of bewilderment of mind, and that incoherent manner of speech, muttering things to herself. During all this time she never slept once, except under the opera-

tion of opiates—not once. Gentlemen, that can not be feigned when the human system is worn out for the want of rest. If the brain is right, sleep follows as an inevitable consequence. You could not, if you wished, remain awake and wakeful. She has never seen Mrs. Fair since she left her but twice.

Dr. Trask may well have stated that she had what he termed insomnia—or approaching very near to that. A perfect state of insomnia, he tells you, is absolute sleeplessness. But he says, of course a person could not live a great while without some sleep. This was absolute, natural sleeplessness. And the doctor tells you that after he came here, the thirtieth of December, down to the time this trial commenced, he does not think that she exceeded two hours in the twenty-four of sleep. And it was of this same character described by the nurse, Mrs. Morris.

Mrs. Marillier tells you that for five weeks before the shooting she was in a state of excitement more or less. That she was crying and weeping during that five weeks, “constantly, continually complaining of her head.”

Judge Campbell asked, is there any evidence in this case except Mrs. Fair’s, that there was a promise of Mr. Crittenden to procure a divorce from his wife and marry her. I have shown you by the letters that there is no doubt on that point. But, gentlemen, we are not left to that alone. We have the positive, uncontradicted testimony of Mrs. Marillier upon that point. She tells you that at the time Mr. Crittenden applied for those rooms, she, wishing to know his object, he told her he intended to divorce his wife and marry Mrs. Fair.

Take the evidence in any part of the case you please and you will find Mrs. Fair corroborated on every important point to which she has testified. To the point also that Mr. Crittenden intended to return there that night—that he had slept there two nights before—Mrs. Marillier tells you that he had hired two rooms there on Monday, and that he slept there Tuesday and Wednesday nights. On Thursday, on the day of the shooting, about 4 o’clock in the afternoon, he came

and asked Mrs. Marillier for a night-key, telling her he intended to go on the boat, and take his family home and take dinner with them, and that he would return there and sleep, and he would be late before he returned—that he wanted to return there that night to sleep.

If Mrs. Crittenden had not sworn to this matter of Mr. Crittenden having apologized to her, Judge Campbell would have said that this was utterly impossible. He would have said that Mrs. Fair must have testified to a falsehood about that. It would be to your minds a most inscrutable thing which she had testified to on the stand if it was not proved here by the evidence of Mrs. Crittenden to be the absolute fact. Has she gone beyond the truth when she tells you that she was determined not to see him at her rooms until he had procured a divorce? Is that truth when he says, "I must see you to-night, or we never again shall meet upon this earth"? Why? "I will commit suicide, and that will be the end of me."

There is a letter written by Mrs. Fair to Mr. Crittenden, in which she reviews the past and speaks of his many promises. She says, "I am not surprised that you did not send me the key. I firmly believed you would not when I asked you, but I wished to try you." Then she refers to the night when he came there and heard Mr. Snyder in the parlor, and he inquired as to who was in there, and you remember she said she got him upstairs, etc. This is the letter which she wrote when nearly every ray of hope had fled; when, as she tells you, she is sad of heart. She reviews the past and recalls to him his broken promises and her broken life.

She tells him the time after time that he has fixed to procure that divorce; the time after time that he had broken his promises. She speaks, almost broken-hearted, of what that little infant child has already seen. She tells and gives him the reason why he should not be visiting her any longer. She had received the visits upon those promises he had held out to her, and all had been violated. "I am willing to meet you in your room; then the child can not see you." She writes this to him: "I will hold myself as your affianced for yet a

reasonable time; and it is your duty to let me know what is your real intention." She reminds him that the time had been fixed in May, when her dresses and clothing were all prepared, and again and again she was disappointed. She says: "You promised me you would go East, and commence the first step towards a divorce." Did she tell you the truth, when she was talking about Mr. Crittenden's promising to procure a divorce from his wife? Does she not write it to him in unmistakable language? Mark her language to Mr. Crittenden: "Everything depends upon your getting that divorce." That is the woman whom Judge Campbell tells you has made up this tale, since she committed the murder, as he calls it; who has fabricated a yarn of this kind; and we turn back to the correspondence of the days of which she speaks, and there you find it written to Mr. Crittenden in the strongest and most unmistakable terms.

Gentlemen, if this woman had murder in her heart, if she was willing to slay the man she loved because he had not fulfilled his agreement with her, was not that the time she would have sought vengeance and taken the law into her own hand, and thus terminate the relations between them with a bowie knife or pistol? Was she not then wrought up to the very highest pitch? Was she not then frantic? Was she not brooding over the past? And had she not sat down, with all those griefs, and penned him a letter that any woman in the land might feel proud of having written, for its fairness, its candor, its coolness, its temper? Nothing fierce, nothing savage, nothing threatening; merely a story of her wrongs, and the painting before him of the picture of their past, reminding him that he had kept her in this condition of waiting for six years, and asking him, for God's sake, to determine at once whether he is serious or not.

This letter gives you an index of the character and the mind and the disposition of the defendant. It unlocks and lays bare before you her mind at that time. "I forgive you," and "I hope God will forgive you." Not, "I will have vengeance;" "I will wreak vengeance;" "I will pursue you." But in all mildness and good temper. "May God forgive you.

You have ruined me; you have brought disgrace upon my child. May God forgive you, and I will try to. I will still hold myself in readiness for a reasonable length of time."

Now, gentlemen, upon the heel of this she made the acquaintance of and married this man Snyder. Why did she marry Snyder? To place an insuperable barrier between her and Crittenden.

Look at her letters, and see her beg and beseech him to tell her, and tell her truly, what he intends to do. And, after writing a letter like that, getting no answer! And after another misunderstanding between them, she says, "I shall not hang in this suspense any longer." She meets a man, and she is half frenzied, as you may imagine she must be, with all these thoughts upon her mind. She pictures to herself that it will make her a home. He is a young man—apparently a very fine young man—of whom, probably, they know very little. The mother insists that it will give her a home for herself and a protector for herself and her child.

She represents to her that she will no longer be living under the scoffs and slanders and sneers of the community; that she will thus redeem herself; that she will then get rid of this heavy incubus that has been hanging upon her, holding her in the chains of bondage for six years past; and she consents and weds the man she does not love. In the name of God, gentlemen of the jury, why did not Crittenden leave her alone then? Is there any excuse for Mr. Crittenden to make his advances now and renew his promise and again revive and rekindle into flame that love which she tried to conceal and tried to hide, and by meeting her on the streets and by writing her notes he gains an interview, bringing her back to that same old position and under that same control he had always held over her prior to her marriage with Snyder. Who is to blame? Did she kill Mr. Crittenden because he had violated all his promises? Did she kill his wife? Did she murder anybody? Did she do violence of any kind to any one? No, she buries everything, she tries to wipe it from her mind. She gives him up even for the second time, once before having tried to give up for Sauers; the second time

she does give him up and marries without letting him know she intends to marry. It is Mr. Crittenden now that steps between husband and wife. Oh! the terrible scathing Mrs. Fair received at the hands of Mr. Campbell for having dared to attempt such a thing as loving a married man. He forgets that after she had done it and after she had absolved herself from all her obligations and relations with him, Mr. Crittenden steps in and does this very same thing, only he goes further; he tells her that it is a matter of two divorces instead of one, and he tells her how to get a divorce from Snyder and he gives her the names of lawyers and tells her that he has even tried to expedite the matter himself in Court. At any rate the divorce is procured. Again under the promise of going immediately after that to Indiana and procuring that divorce and marrying her—his family at that time you will remember being in the East, not being here.

Then, gentlemen of the jury, he does his work—he accomplishes his deed—unwilling to give her rest—unwilling, as he told her when she said to him, “I can marry Mr. Sauers.” Unwilling that she should marry any other man. Keeping his word when he said, “I will follow you, and I will kill any man who marries you, and you too. I will not allow you to be the wife of any other man; you never shall be.” How truly he kept his word. She never was the wife of another man for any great length of time.

Gentlemen of the jury, when you look at the *morale* of this case, when you look at the moral delinquencies of the parties, you will find it just as steep and just as grave on the one side as on the other.

You will perceive, gentlemen, as I read another letter to you, the circumstances under which Mrs. Fair was placed. Mr. Crittenden having visited her and traveled with her and left her in the South, returned to California. She had not received a letter from him for some time. She says she cannot believe what has been told to her, what has been written to her by some person.

“A month! Think of it. A month since you wrote me a line. A short letter from Chicago last. Did you so intend when you left

me or have you changed? Had I been told that you would so treat me, when you seemed so anxious about my health, too, and happiness, I would have laughed at it. Anxious about my health! About me! Good God! you seem to be trying to kill me."

Gentlemen, imagine the excitement under which she is writing. His letters which he had written, as appears by the correspondence, had miscarried or been delayed and she had not received them. She had been waiting there a month in suspense and supposed he had absolutely neglected her. And this after he had promised to return to her in a month.

"I have blamed myself so much, too, since you came to me in New Orleans, for ever doubting you. I have wept for having written to California for information about which I doubted you. I feared you were deceiving me. And now, Oh God! keep my brain from going mad! When I received your telegram I determined to not write again till your letter came—your letter written only after I telegraphed to you. But I could not wait; I must write or my head will burst. For days I have been like one crazed and where will it end? I'll tell you—in murder, in a madhouse or in death."

In the name of God, gentlemen, who is she referring to? "In murder, in a madhouse and in death." She talks like a crazy woman; she cannot believe it; she writes like a crazy woman; she will ask the question at once and before she asks it she denounces it as a lie.

"It is a lie, I know it is a lie, it must be—it shall be a lie. God! if it were true. A woman (curse her) wrote me that Mrs. C. had a baby or was soon to have one." It is one of the strongest letters that could be introduced in this case to show that she believed that Crittenden was true to her. She believed in all those hopes which he had built up. She believed in all those sacred promises he had made. When writing she stamps it as a lie, and curses the woman who penned the lie to her.

"Is this true? God help you and me if this is true. I *will* know the truth. So it is better for you to tell me and at once. Neither mother nor sister had anything to do with this, so you need not blame them."

All her past life, and six years of hope and promises, hope

deferred, are crowding upon her brain. The thing has culminated, if true, in absolute deception on his part. He has not written to her for a month. If his wife has a baby, it proves that he has deceived her, and has deceived her throughout.

"O! for strength and reason a little while longer. Six years of life gone, and what have I for them? A splendid ruin—a wreck. Perhaps your letter brings death."

Gentlemen, instead of that being a letter tending to the injury of Mrs. Fair, or tending to show that she is a violent woman, who would commit a murder of this character, it shows that her brain was crazed. Notwithstanding this letter which she had received, containing this information, she could not believe it. She gives it the lie. She still believes in his promises, and yet she is in doubt. Having heard that report, and there being this long silence—this month in which he has not written to her—the result, if the information turns out true, is to be murder and the mad-house.

He telegraphs her to come back, then to remain in New York, and then to return, all in a short time. And, finally, she says that she has secured a passage to Havana, and must go; and in this letter she says that this trip will bring her absolutely some nearer to him than New York, there being four or five steamers plying between Havana and Panama.

She does not deny that she was in the habit of getting money from Mr. Crittenden. But she does deny that when Mr. Crittenden died she was indebted to him. How was this? He took charge of all her financial affairs. He had her stocks. He managed all her pecuniary matters of that kind for her. Her money was tied up in these stocks, and if she wanted one or two hundred dollars she would call upon him for it. Subsequent letters which have been brought out and commented upon fully and carefully, explain all about these matters of purchase, and her dealings in stock. They show conclusively and unanswerably—it appears from them in evidence, in Mr. Crittenden's own handwriting—that she made her own investments and realized her own money, her profits made by herself by reason of such investments.

In a letter she tells him, as she told you when on the witness stand, to let money no longer be an excuse, that she would let her take all she had, and she would give it gladly.

There is the last letter which they have called my attention to, in which she tells you that she is willing to forsake all. She is willing to surrender her house, her home, her all, and take the object of her heart in perfect poverty, without a farthing; and she says, "Without you, of course, I want money," and she concludes by telling him that, "I will give her all I have, and will work with you to get her more. Let that not be an excuse; or let it be an excuse no more."

"I will still wait a little while; I will wait a reasonable time for you yet, although all your promises have been broken—and notwithstanding all these, my love for you is such I will wait a little longer; but, for God's sake, do give me a decisive answer, that I may know how to act, not only with reference to my own future, but for the sake of my little child, who is growing up to the years in which it becomes necessary for me to be more careful and more particular with her in regard to her observation."

She crowns it all and sums it all up in the letter, which is more eloquent, more conclusive of the true relations existing between these parties, than anything which can be uttered by counsel in her behalf or against her. She is willing to leave him; she does leave him; she takes another husband, and he then again revives the thing, and kindles the flame until it bursts forth, and once more creates the same attachment and the same relations that had existed at the time she wrote that farewell parting letter.

Judge Campbell made a terrible attack upon Dr. Trask, for having, when he first saw Mrs. Fair, supposed that she was feigning insanity. Gentlemen, that evidence gives to you the sincerity and honesty of the man. He had the manhood and the independence when he found that impressions, mere impressions as he shows you they were, had been erroneously formed, to come before the public and at once confess those wrongful and improper impressions. He made no examination of her in the City Prison. He supposed from seeing her, without any other examination, even feeling her pulse or her eye or inquiring of her physician, because he says he knew

nothing about her past history and physical condition—from supposing that she was a strong, healthy woman—had just committed this act and was trying to feign insanity. But he tells you that after he became acquainted with her weakened, prostrate, almost ruined constitution he saw at once that disease, not only a sudden disease, but a chronic disease had fastened upon her system which time itself cannot eradicate or remove. Then he tells you he was satisfied that she must have been insane or unconscious at the time she fired the fatal shot; that she never attempted once during all his visits to her in the City Prison to sham or feign insanity upon him; that he even watched and examined her from time to time and day by day without letting her know his motive or his object. He took all this trouble and all this pains, and comes here finally and tells you that she was an insane woman.

I think it will strike the mind of any man who has heard the correspondence between Mr. Crittenden and Mrs. Fair that she was not the only insane one upon the subject, but they were both insane upon the subject of their love and affection. Let us throw the mantle of charity around the dead and say that his mind was delirious upon the subject. I believe that those two parties were, upon the subject of love, the one for the other, absolute monomaniacs, absolutely insane. Their letters, their actions, their little quarrels, everything goes to establish it, and I believe that if Mr. Crittenden had from any circumstance taken the life of Mrs. Fair, that Judge Campbell with his ability, taking the case upon those letters alone without anything else, would have procured his acquittal, upon the ground that every act was insane. Every letter he wrote was insane. A man 50 odd years of age, highly respected, of cultivated intellect, one of the leaders in his profession, belonging to a family who had a national reputation, who had daughters and grand-daughters, sons, a wife. A man can hardly reconcile his conduct and his letters with a thoroughly clear state of the mind. The balance-wheel somewhere had shifted from its place. There was a disorganization, there was a displacement in the machinery somewhere

which took him off his center, off his guard, and led him on to the position in which you found him at the moment of his death. He became infatuated, and so did she. If ever two persons sincerely believed that they loved each other, they did. They believed it; it was sincerity upon both their parts. I do think they were both a little wrong in the brain.

Gentlemen of the jury, I have now discussed every point that can have any bearing upon this case, one by one, whether having a direct influence or a direct bearing upon it, or the issue which you are to pass upon, or not. I have attempted to establish to you first the fact that she loved Crittenden and he loved her; that their first introduction, so far as Crittenden was concerned, his family being away at the time, was not, either upon his part or hers, with any idea of what did follow; that his first introduction to her, perhaps, enkindled all his passions of lust. I have attempted to establish that she did know him, as she supposed, a single man—she knew he had children and grand-children; that he did promise to marry her; that he did tell her that the feelings once existing between himself and wife had become estranged; that he intended to procure a divorce from his wife; and that they did live separate and apart, and that she had every reason to believe it.

I have endeavored to show that she believed that in the main he was sleeping separate and apart from his wife, although taking meals with his family when they were in the same town. I have endeavored to satisfy you that the threats relied on upon the part of the prosecution prove nothing, were unmeaning, and were not made with any idea whatever of ever carrying them into effect; that she had had thousands of opportunities, for exactly the same causes which had existed when she did shoot him, and never attempted to take his life. I have attempted to establish to you, by the facts of this case, that money was not her idol or her God, or her object; that she had means, and more particularly at the day of the shooting; that she had of her own \$40,000 in bank, and he was poor; hence money could not have been her motive.

If I have established to your satisfaction that she has told the truth upon the main subject matters upon which she has given her testimony, as rational men, as sensible men, as reasonable men, it is your duty to believe what she tells you as to the condition of her mind at the time of that shooting.

I have attempted also, gentlemen, to satisfy you that upon the evidence of the prosecution alone, without one iota of testimony upon the part of the defense in this case, you must acquit the defendant. I have shown you that no rational human being would have done what she did under all the surrounding circumstances.

I have attempted to show you by the evidence introduced on the part of the prosecution alone, without once referring to the medical testimony—to the character of her disease—without once referring you to the broken-down, ruined constitution of this poor woman—upon their own evidence, standing solitary and alone—that if you discharge your duty faithfully and uprightly, your verdict must be, “Not guilty.”

Gentlemen, see how this woman has been followed, see how she has been tracked. They have had a bloodhound upon her heels and tracks, on every path she ever traveled from the day of her birth down to the day of her trial. And here, instead of being tried for the murder of A. P. Crittenden, she has been tried for every act of her life. She has been called before you to atone for and explain every act of her life from her cradle down almost to the present day. They have scoured the State of Nevada, they have scoured the State of California, they have left no stone unturned for the purpose of crushing, demolishing this poor, unfortunate, helpless woman. Gentlemen, they have attempted in this way to carry your mind away from the issue you are here to try. They have been attempting in this matter to have you try the question of her character and her antecedents, and convict her upon that. Good God! gentlemen of the jury, if this woman has made a mistake in her having those relations with Mr. Crittenden; if she has committed a moral wrong; if she has outraged the moral code of our society in that respect, heaven knows that she has been punished enough for that! Do not hang

her for things which the law does not make criminal. If she has done wrong, most bitterly has she atoned for it; most severely has she been punished—six long months in that solitary prison, being compelled to have this dear little infant of hers visit her in this dull and gloomy cell. I say, if she has violated any of the laws of morality, do not, for God's sake, bring that to bear against her upon the question that you are assembled here to try.

Two people have done a wrong—she and Crittenden both—a wrong which is not cognizable by our laws, or punishable as a crime. Do not have your minds, therefore, led away and carried away upon the question of her antecedents, whatever they may have been. It matters not whether she were the queen of an empire or the vilest woman who ever trod upon the face of the earth, the sun of justice shines alike upon the just and the unjust. She is not here being tried for that; but they have made the attack for an unholy purpose, to improperly influence your minds. We have met it. I have expressed to you my views upon the evidence as to whether there is one woman in ten hundred thousand who can go through the ordeals that she has; who has worked hard from her early youth down to the day she met Crittenden, and long after, to earn an honest living, to gain an honest support; who has been compelled to be thrown among miners—men, instead of women, for the purpose of carrying on and conducting her business; who has been compelled even to take the stage to make money—I ask you if there is one in ten thousand that could come out here shining so bright and resplendent as she does? I am glad, on her account, that they have undertaken to investigate this question of character; these foul and broadcast aspersions that have been filling the mouths of the community of Nevada, that have called these men to give proof of evidence that may have given rise to these slanderous tales. Slander, gentlemen, you know, outstrips even the lightning, with its forked tongue, in speed, and scatters itself to the four corners of the world quick as lightning. Utter one word against the character of a female, another takes it up, and it goes on; and within one month

you can ruin any woman in the community, however pure she may be in heart.

We find her pursuing an honest course of industry down to the time that A. P. Crittenden makes her acquaintance, and after that time down to the time that she commences investing in stocks, and then until her stocks begin to realize—and she is fortunate in getting hold of stocks that pay—and makes a little money, so that she is easy in her circumstances again; and, gentlemen, let this not be hurled at you again.

The learned counsel who will follow me will build up in imagination structures of beauty and grandeur. He will paint to you the debased woman in all his glowing words and figures of speech. He will attempt to make Mrs. Fair a woman of such a character. He will discuss this part of the case to you, to divert your minds from the case itself; but whenever he gets upon that stretch of imagination—whenever you find him, with that eloquent tongue of his, wandering to the heavens to find some thing or creature to talk to—whenever Mr. Byrne approaches that part of his case, come back yourselves, in your own minds, to the thing you are here to try; was this woman conscious or unconscious on the day she shot A. P. Crittenden?

Gentlemen of the jury, that evidence I have placed before you, and I have attempted in my feeble way, according to the best of my ability, to analyze it, in order that we might all understand it, and understand it in all its bearings.

I have called your attention to all the evidence upon this point. I have shown her condition before, at the time, and subsequent to the shooting. I have shown by Dr. Lyford that for a year before she was in an enfeebled and enervated condition bodily. By Mrs. Marillier that five weeks immediately before the shooting she was constantly complaining, excitable, and had a terrible headache. This is before the shooting. I have shown by the testimony of Dr. Trask that he found all the symptoms that Dr. Lyford had expressed and stated to be true by his own examination—his own diagnosis of the case, and his own personal inspection and examination

of the womb. I have shown by the nurse that she was, during all the time she was there, really not in her correct or right mind. I have shown by Dr. Tucker that the act was non-volitional at the time of the shooting. I have proved by the evidence of Dr. Deane that, from her physical condition as described by other doctors, and from his own observation of her as she sat here, she undoubtedly was at that time unconscious. I have shown by all these physicians, one and all, that a woman suffering from the ailments under which she was laboring, and had been laboring long prior to, at the time and subsequent to the shooting, was liable, at any moment, without a cause, without a reason, without a motive, to kill the nearest and dearest friend she had upon the face of the earth. All these things I have established beyond all question by the evidence in this case. Have I not done so by preponderance of proof? Is there a single scintilla of proof against it? Is not the evidence clear and conclusive upon the subject? Is there anything left for speculation? No.

These letters have been introduced in evidence here for two purposes, one is to show the relations of these parties—to show that she had no motive in killing Mr. Crittenden—another is to show that when she tells you she had no motive she told the truth. Crime is not committed without a motive. Oh, says Judge Campbell, in the moment of jealousy persons are shot down where there is no apparent motive. Gentlemen, there is a motive. Here there was no such motive as that. Why? Because she had the promise and had the full belief that he was to be separated from his wife and become her husband. Her future depended upon him; her whole future life and that of her daughter depended upon his promise to get a divorce and marry her. What reputation she had that would injure her was caused by reason of his relation with her. Nothing could cure that or do away with it except a divorce and marriage. Killing him did not help her. Killing him made it worse. It put her in a worse position than before; it made her a murderess; it disgraced her and left her child with all that disgrace stamped upon it, to wander through this world without a protector. I say there was no

motive and the act was an insane act, and all the writers say that where the act is insane it is the strongest evidence of insanity.

I have cited you the cases of Freeman the negro, and Cole. They were healthy, able bodied men and with no disease whatever. They slew their victims as soon as they saw them and the juries by their verdicts decided that in the case of Cole the simple seeing of Hiscock was sufficient to cloud his reason and to make him unconscious, just long enough to fire the shot and no longer. There was another case of Mary Harris some three years ago. She walked into the Treasury Department in Washington and shot down one of the clerks in broad daylight. What was the defense? That she was unconscious. What was the proof? That she was troubled with dysmenorrhea—that was all-painful menstruation, and the physicians testified to the fact that that might affect the mind of a woman at any moment. And she remarked immediately after being arrested and after the shooting, “Is it possible? Why did I do it? Why did I shoot him?” Almost like this case. The jury acquitted her in five minutes. They were out I think, just five minutes.

Take the Gun case in our own city; he shot a man for having, as he was told, seduced his sister. But that was no defense; this is no defense; we have not pretended it to be any defense here that Mr. Crittenden had not kept his promise. The fact that Gun shot a man who had seduced his sister was no defense for him and so Judge Morrison told the jury; but he told them further that if at the moment he did shoot, his brain was crazed or he was in a state of frenzy or it was an uncontrollable impulse they should acquit him and that is the ground upon which Green was acquitted; and I only wish I had the learned argument of my friend (Mr. Campbell) here to read to you that he made in behalf of Mr. Green, about how trifling a thing, how slight a thing, would turn the brain of a good, strong, healthy man, without any bodily ailments, without any troubles, without anything calculated to bring about a disorder or such a state of mind.

The defendant here stands indicted for having, with malice

aforethought, malice prepense, slain Mr. Crittenden. If she is guilty of that act, she is guilty of the most cruel murder—unprovoked. She is not guilty of murder in the second degree; there is no manslaughter about it. Do not go to compromising you verdict; stand right up to the rack like men; say that her defense is a good, full and complete one, or hang her! There is no middle way; there is no halfway house in this case. We want no compromise verdict. If she committed wilful murder, in her right mind, I will sing and talk and cry as loud as the District Attorney can for executing the laws. I have a family, and I live in this community; and I have for twenty years sustained the laws in all their rigor. And, I beseech you, do not, in the name of Heaven, undertake to compromise, and say that you will convict her of some lesser offense. Meet the question fairly and completely: Was she conscious, or was she not? If she was not, gentlemen of the jury, she is entitled to a verdict of acquittal. If she was, she ought to be punished to the extreme penalty of the law. Approach the consideration of this subject with care. I beseech you, as the advocate for this poor woman, that you will not treat it lightly. Bear in mind the great responsibility which you have on your hands—the life of a human being. Remember that she is now watching with anxiety every look, every action, every whisper among you. Her future, gentlemen of the jury, is with you. You are, to-day, or to-morrow, to say whether she shall go forth free, or whether she shall expiate the act with which she stands charged upon the gallows.

Gentlemen, man sees the act, God sees the circumstances. "Judge not, lest ye be judged." It is a fearful thing to imagine that we could have made a mistake upon so grave a matter as this. Approach it with trembling hands. Approach it with awe and terror. Approach it with all the considerations that the love of life demands. Approach it manfully, independently—with a desire, if you can, to find some evidence here to excuse the act. Do not look and try to sift out evidence to convict, but do what I know it will be your pleasure to do, try to find evidence that will alleviate. Try to find evidence that will excuse. Try to find evidence that will ac-

quit the prisoner. The life of a human being is not to be played with. It is a matter which you are now considering that involves a degree of responsibility that probably never before has been thrown upon you, and I trust in God that it never will be again.

Place yourself if it is possible in her position; place a friend of yours in her situation and say to yourself what would you expect a jury to do upon this kind of evidence. Take it home and reason thus, reason sincerely, reason carefully, reason logically. Do not run away with an infuriated or false or foolish idea that because a responsible, respectable citizen has been slain another life must be sacrificed. Do not act upon the principle of life for life, eye for eye, or tooth for tooth. But, gentlemen of the jury, stop and walk, so far as it is in your power to do so, in the recesses of that mind. Take hold of it, so far as God has given you power, to investigate the mind of your fellow man; take hold of it, examine it by the lights you have before you; and remember, gentlemen of the jury, while you are examining it, that we are any one of us liable to be stricken with the same terrible calamity before the sun sets to-night. Before the sun rises to-morrow morning, his Honor, the District Attorney and myself, or any of you, gentlemen, may be fit subjects for the lunatic asylum, notwithstanding all our reasoning faculties now. Remember that there is not a day goes by in which we can not take up our daily papers and find a record of one, two, three, or four, sent to your State Asylum. Remember that there is something either in the climate or in the character and actions of the people of California that causes more suicides and more insanity than any other place upon the face of the earth, of its population.

Do not look upon this as the learned counsel asked you to—as a plea unfavored in law, and by courts and juries. It is not. On the contrary, eminent jurists, when a question so grave as this comes before them, are very cautious and very particular in charging the jury to beware that they do not make a mistake. Is it for you to set up your minds and your judgments against the judgment of scientific men who have

made this thing a study for years and for a lifetime? No, gentlemen of the jury, you will take the evidence, sift it well, weigh it well, and do justice to the prisoneer.

I implore Heaven, the Great I Am, the Great Architect of the Universe, as to my honest belief, and the sincerity of it, as to this woman's condition of mind—that she was unconscious. I implore Him to throw light into your minds, and to so guide you by truth that you may investigate this case truthfully, and get at the real truth. I implore it, and ask it. Gentlemen of the jury, season justice with mercy.

“The quality of mercy is not strained;
It droppeth, as the gentle rain from heaven,
Upon the place beneath; it is twice blessed;
It blesseth him that gives, and him that takes,
'Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown.”

Take this unfortunate woman's case to your jury box. Do as you would like to be done by. Cast no favors in this important case, for favoritship, upon lawyers, or witnesses, or counsel. If counsel have done things during the progress of this trial that have called for the rebuke of the Court, do not visit those things upon the client. If she has, in the excitement of the moment, and with all her suffering, exhibited herself by making remarks that you would not expect in a court of justice, in the name of mercy, gentlemen, attribute it to the proper cause—to her condition. Do not let these trivial things work upon your minds when you are sitting here in the seat of judgment. Judge not lest ye be judged. Judge well; judge correctly. Bring to bear and pray for all the help you can get to assist you in arriving at the truth, and this is all I want in this case—nothing but the truth.

Take her; take her case to the jury room; and when the learned counsel builds up his fanciful cases before you, bring your minds back to the evidence in this case; the circumstances of the case; the want of motive; the absolute, positive, uncontradicted testimony of medical men, and her nurse;

and, gentlemen of the jury, be just, and I shall be satisfied with the result of your deliberations, whatever that may be.

MR. BYRNE FOR THE STATE

April 25.

Mr. Byrne—Gentlemen of the jury, the case in which you have been empaneled as jurors involves considerations as deep to the interests of the community as they are to the interests of the defendant. The peculiarities of this case, and the magnitude which has been attached to it by the counsel for the defendant, are not the peculiarities nor the magnitude which it deserves. It is true that the defendant at the bar is charged with the commission of an offense, the highest known in the calendar of crime. But if that were all, the probabilities are you would be enabled, after the long attention you have bestowed on the facts of this case, to dispose of it with great ease. But unfortunately for the community, unfortunately for the defendant, there are considerations connected with this transaction that lift themselves far above the mere circumstances connected with the death of Mr. Crittenden.

The defense which has been here interposed strikes at the very foundation of morality, of religion, and of the safety of the land.

The defense introduced in this case, if successful, will sap the very foundation of that religion, and that morality, and convert the society supposed to be governed by law into one vast pandemonium. Because, the real fact that is sought here to be introduced as a protecting shield to the defendant is the question of morality against free-love—that great battle between the acknowledged law of the land and those peculiar notions that seem, so far as we can judge from this defense, to control and influence the defendant at the bar.

Now, much has been said here by the gentlemen representing the defendant; that approximated as near blasphemy as it possibly could, without being blasphemy. We are told in one breath that this woman was the wife, by the hand of God, of the unfortunate deceased; and we are told in another breath that she was the delegated agent in the hands of the

Almighty to send the unfortunate man unprepared and unannealed before his God. If these views, in the face of our respective statutes of this State—if these views, in the face of the laws that govern and control all Christian countries—are to be received in a court of justice, are to be indorsed by you and by virtue of which indorsement you relieve this woman from the terrible crime which she has committed, it is like pouring the sweet milk of concord into hell, uprooting universal peace and confounding all union upon earth. It is for you, the agents of the law, the protector of all public morality, the sworn legitimate delegates of that power upon which this woman's guilt or innocence depends—in carrying out your reasons for her release or giving your reasons for her condemnation—to approach with all care and thought, all the attention and prudence that you can possibly command, to see that no principle such as is advanced here by the defense be left as a record disgraceful to the age in which we live, and so well calculated to turn society into a state of chaos.

The case itself turns entirely and exclusively upon the testimony of Mrs. Fair. There is not one solitary fact, not one circumstance that has been testified to here by any of the witnesses on the part of the defense that can in a legal point of view enter into consideration. It is based entirely, solely and exclusively on the testimony of this woman. Under the old rule an individual could not testify in her or in his own behalf, but by a statute passed some two or three years ago in this state following the example of some other states in the Union, individuals accused of crime are now made witnesses in their own behalf if they think proper to exercise that right. By virtue of that statute in this state, this woman took the stand in her own behalf and related a story that bears upon its face in every particular the evidence of absolute improbability—circumstances that never could have transpired. Taking the salient point at which the defendant has started and tracing that down to the period and time of the assassination of Mr. Crittenden, every fact that she has related is inconsistent in my judgment with the truth.

Who is there among the multitude that have listened to her testimony will declare upon his judgement and oath, that Mr. Crittenden had made a companion of her, and that she had been affianced to him for twelve months before she became aware that he was a married man? A woman engages her affections and agrees to marry an individual about whose antecedents that woman had not curiosity enough to inquire. His sons resided in the same community. A man probably the most prominent upon the Pacific coast—at least the most prominent member of his profession—and better known by reputation than any man in Nevada, devoting all his attention, according to this lady's accounts, to her. He enlisted her sympathies and she says engaged her affections to him, agreeing to get married to a man of whom she knew nothing, about whom she never made an inquiry as to whether he was married or unmarried, to settle in her own mind whether he was in a condition to marry or not. Tracing it from that one point—tracing her whole connection with this man from that time down to the time when this cloud came over her brow and when she heard the voice of the widow of her victim at the time she fired the pistol—all establish the general proposition that her whole story has been made out of full cloth with a view of having it to protect her on this, the most important period of her life.

You are expected by this woman to believe her whole story and upon the basis of that belief to release her from this trial into which her bad actions have gotten her. Why, there is not a motive in the world that could possibly actuate a human being but was in active play when this defendant was testifying in her own behalf. There never was that human being born of woman but would falsify the truth to any extent when her life and liberty was in the one scale and falsehood in the other. Do you suppose that an individual placed in the position of the defendant would hesitate for a single moment to pile falsehood upon falsehood until it o'ertopped itself if she thought that by those falsehoods she could relieve herself from the responsibility into which

her crimes had gotten her? The man who thinks that thinks contrary to the experience and wisdom of the world.

Why did this woman carry a pistol at all? Was she ever offended by any human being? Was she ever placed in a position where it was necessary for her to use a pistol mechanically? Is there any evidence that upon any occasion in any part of the world that she has visited, that it was necessary either to protect her own person or her own honor against any vulgar aggressor, that it was necessary for her to have a pistol for that purpose? If we are to accept her statement except when she fired at Mr. Crittenden down stairs one evening, no necessity in any way existed for her to have about her person a pistol.

We have her in the possession of this deadly weapon on the day of the shooting; we have the employment of the carriage-man; we have her going to the boat; we have her waiting until the boat is returning to San Francisco; we have her deliberately walking up to Mr. Crittenden and shooting him down and then retiring into the recess of the cabin and after the expiration of five or six minutes, when she is discovered by the son of Mr. Crittenden, we find her entirely free from any of those idiosyncracies or peculiarities testified to by these physicians. We find her then and there accosted in the presence of a large number of persons as being the author of this killing. We find her not alone acknowledging the act of blood but giving a reason for it, which at once dissipates all theories adduced by the distinguished physicians who have testified in her behalf.

When accosted, accused, detected, arrested, this woman whose reason has been dethroned, who was as crazy as crazy could make her, stands up and deliberately and coolly states that she did the act and was glad of it; and the reason she gave which places the question of her insanity entirely out of sight—the reason that she gave was precisely the kind of reason any one would give who had his senses. It was done by the reason of the fact that he, Mr. Crittenden, had ruined herself and daughter.

Gentlemen, there may be a possibility that this woman, as

in the case of Mr. Cole, quoted by the counsel yesterday, was entirely sane and conscious immediately before the pulling of the trigger and sane and conscious immediately after it had been pulled, but at that exact infinitesimal period of time, the fractional part of a second, she was insane. There is a possibility within the range of history or if not history there is a possibility within the range of the human mind, where a person as in the case of lightning, has been struck dead upon the instant. But it is asked of you in the face of the testimony here to indorse what might not be improperly called an absolute absurdity. Our statute implies, and supposes and presumes, that everybody charged with the commission of a crime is sane, and to show that it is otherwise is for the defense to prove.

(*Mr. Byrne* reads from the case of *Rodgers*, also reads *People v. Myers*.)

Mr. Byrne: Do you object to my reading any authority except those which I have given you notice of?

Mr. Cook: Most certainly.

Mr. Byrne: Oh, that won't do. Judge Campbell referred to a large number of authorities that he did not read.

Mr. Quint: There were only two books referred to in the opening of Judge Campbell; one the case of *Abner Rodgers*, and the other *People v. Myers*.

Mr. Byrne: I will call your attention to what is considered the ablest essay on this subject, written in the nineteenth century. It is *Bucknell on lunacy*.

Mr. Cook: I object to the reading of the book. It was not referred to in the first place and it is not competent to be used at all.

THE COURT: It is impossible, *Mr. Byrne*, to allow this to be read under our rule. You should have furnished then the authority in the opening, but this book was not referred to. The rule is that you must furnish all the authorities you rely upon—to the defense in the opening argument for the prosecution—any authorities not referred to in the trial proper.

Mr. Byrne: Does you Honor state the prosecution has no right to refer to any of the medical authorities?

THE COURT: I have not said so. I say it has been decided that you must furnish your authorities on your opening, and unless you did so you can not read them.

Mr. Byrne: Judge Campbell referred to the *American Law Review* of April, 1871, and I will take the liberty of referring to it again.

Mr. Cook: I object to the reading of this.

THE COURT: I overrule the objection on the ground that this otherwise would exclude every text book known to the law.

(*Mr. Byrne* reads from *American Law Review*, April, 1871, p. 489.)

I now call your attention, as your Honor has decided that I cannot read these cases for the reasons given, I now call the attention of the Court and the jury, as a part of my own argument, to the opinions of Lord Brougham.

Mr. Cook: That I shall object to; it has not been placed in my hands to comment upon. I object to the opinions of Lord Brougham.

Mr. Byrne: I propose to make it a part of my argument in reference to these doctors. The defense certainly have no more right to deny me to read this volume than to deny me the right to read a description of Don Juan by Lord Byron. *Mr. Quint* endeavored to institute a comparison between Lord Byron and his murdered victim of the defendant. I do not deny that they had a right to do that, in that poetical manner and style, reading a broken passage as they did, and which they must have done with the intent to produce some effect. Then, I say, I have the same right to take the opinions of a man who was once Lord Chancellor of England, and read them.

THE COURT: *Mr. Quint*, in reading any authorities he may have read, came within the rule, because in reading them he gave you notice of them; but if you have not referred to your authorities, you have given them no notice, and you are not within the rule.

Mr. Campbell: The question is as to the right of the counsel to hold a book before his eyes and state something that is in it as expressing his ideas. If the rule contended for by *Mr. Cook* is to be carried to the length to which it seems to be proposed now to carry it, it would shut off all use of the ideas of other persons in a speech. Suppose an idea is advanced by the counsel on the other side and I have read something which I believe would be a complete answer to it in Bacon's works or in the Bible or in Shakespeare, have I not a right to quote it as expressing my idea? I think this reasoning is unsound and I propose to read from some writer adopting as my own what has emanated from one of the great minds of the age. Now can it be said that I am prevented from so doing? I may quote any author I suppose, adopting his language as my own; I do not read it as an authority by which the Court and jury are bound, but I merely read it as my own views. I submit there is no rule on earth which prohibits that.

THE COURT: I will allow you, *Mr. Byrne*, to read from any books not of a legal character, or that do not express any opinion in regard to insanity.

Mr. Cook: Poetry we shall not object to; *Mr. Byrne* may read Pollock's "Course of Time" as long as he pleases.

Mr. Byrne: I propose to read as a part of my argument Lord Brougham's opinions upon the subject of doctors, in the second volume of his miscellaneous writings: "Opinions of Lord Brougham Upon Politics, Law, Science, Education, Literature, etc." I adopt

what I propose to read as my own opinion and I propose to give it to the Court and jury in this way.

Mr. Cook: If your Honor please, the counsel might take a law book and do the same thing. This is a portion of Lord Brougham's opinion as derived from various decisions he has made.

Mr. Campbell: I submit that there has never been a case in which it has been held that counsel could not read from any writer a quotation as expressing his views.

THE COURT: I will confine you, Mr. Byrne, to the rule that you shall not read anything in the way of legal authorities or relating to opinions upon the subject of insanity, unless the defense have heretofore referred to it.

Mr. Byrne: It was my intention, gentlemen, to have called your attention to what many of the distinguished, able and acknowledged heads of the medical profession have said upon the subject of insanity. But owing to a rigid, cold, inexorable rule, his Honor upon the bench has excluded those authors from your consideration. I wished to do this for a double reason; first to show you what the experienced wisdom of the world has said on the subject of insanity; what the combined wisdom and experience of the world, certainly in that department, has said in regard to the responsibility of criminals in the commission of public offenses; and lastly I wanted to show how far Dr. Trask has penetrated into the recesses of science when he tells you, as he has on the stand, that the acknowledged head of the medical profession in the science of medicine in America is regarded by him as out of date. But these are all ruled out and being ruled out I am compelled to proceed in a very desultory manner to the consideration of this evidence.

Who is the defendant at the bar? This dulcet creature that has been painted to you? Who is the person who, at the age of 24 or 25 years, when she met Mr. Crittenden was pure as the snow that hangs on Diana's temple? This unsophisticated creature, impervious to any corrupting impressions from the want of experience and from the want of age? We find that at this period she was a thrice-told widow. At that time she had had the benefit of three husbands—two under ground and one living from whom she had never been divorced. Is that the kind of lady that the wiles of the

seducer would be likely to accomplish anything with? Is it to that kind of an inexperienced girl, scarcely out of her tender years, that a man of Mr. Crittenden's character, and tone, and position, professionally and socially, would bend his energies, his hopes and dreams, to accomplish her ruin? Or was she, on the other hand, one who in her career of matrimonial bliss, and from her knowledge of men, from her vast experience in the character of a wife, who was just the woman, as evinced by her talent upon that stand, to seduce the devil from the path of virtue, if he ever trod that path?

We have her own story that with her first husband she resided for a year, when he died; that she then wedded her second husband, who it seemed was in the habit of practising target practice at her when she was lying in bed, with pistols, and that he found it necessary to commence proceedings against her for a divorce; that her third husband, from some cause unknown to me, and I presume unknown to you, found it necessary to send himself before the ever-judging God by blowing his brains out in the city of San Francisco. And yet, with that experience, an adventuress in this country, pursuing, if you please, the even tenor of her way, she finds this man Crittenden, isolated in a region of country sparsely populated, a man of renown, a man of character, a man of great professional learning and experience—a man whom we find in the possession of wealth, which would seem to you fabulous if I were to name it to you; we find that woman employing all the wiles that women are capable of when they seek to accomplish the end they design; we find that woman winding herself around his affections, and his feelings, and everything of that kind, like the ivy around the oak, and, like grandmother Eve, giving him that bitter, galling fruit

"Which brought death into the world,
And all our woe and loss of Eden."

If there has been any seduction in this case, gentlemen, there the seducer sits in that chair, and not the unfortunate

wretch whom she has sent before his God thus untimely. Tell me about men seducing a woman of her experience, that they can invade the sanctity of their virtue and accomplish the destruction of their sentiments, can play with their affections like the wind. The age of Mr. Crittenden forbids it. His position in society ignores it, but like all human beings of his sex, whether old or young, finding himself in the presence of one whose every fascination spoke of death to a human being—she, with a full knowledge of his immense wealth, of his professional and social standing, wound herself around him, and never left the man until she left him in his grave.

Remove the romance and poetry that have been thrown over this transaction; rob her of her sex; take away that great shield that protects her, and this is nothing but a simple question of cold-blooded assassination. Because the man would not desert his God; would not let his family, his children and grand-children be thrown upon the cold charity of a still colder world; would not listen to the most atrocious sentiments ever uttered in a court of justice in any Christian country in the world; would not do that which would consign him to the very lowest of low depths; would not sacrifice character, social position, professional position, and everything that makes life valuable and honorable to a man; because he would not do this, strikes him to the earth, and in the manner which you heard testified here the other day.

Yet the counsel asks, "What motive had this woman to do that?" He says she had made a fortune which placed her beyond the possibility of want. She was without a friend in the world except Mr. Crittenden, and without position. But women of that kind have a motive. If she could, by any means in the world, by any means of legerdemain which peculiarly belongs to her sex, with fortune at her back, form an alliance with a man of such distinguished character, she would have mounted to the very height of her ambition. Failing which, she murdered this man. Whatever feelings she might have entertained towards Mr. Crittenden, the moment she found herself deceived; the

moment she discovered there was no possibility within the range of circumstances by which she could ally herself with this man, she shot him to the earth. That is the motive; for

“Earth hath no rage like love to hatred turned,
Hell hath no fury like a woman scorned.”

It was the fact that she was being scorned, repudiated, driven away, her hope forever blasted, the true and trustful wife returning to the country; the fact that the man had seen the error of his way, and was about, at the age of nearly sixty to commence a new life, that he might be an ornament to society and endear himself to the love and respect of his children and grand-children. When she found that her game was up and that all hope was gone, that she had no longer any chance of the realization of her ambition, then it was that she prepared herself—fully equipped at every point—and marched down coolly, deliberately and with malice aforethought, and shot dead the individual towards whom she had betrayed in her testimony so much affection and so much love.

That is the story, stripped, as I said a moment ago, of all the surroundings that really have nothing to do with it. These letters that have inscribed themselves upon the literature of the country, by the side of which the objectionable parts of the Confessions of Rousseau would be biblical, and the lives of the burning Sappho would be an ornament, have nothing to do with it. There is not, in the whole range of English literature, or literature published in the English language, no matter how objectionable it may be to the more cultivated and more refined—there is nothing to be found in the Monk of Matthew Lewis equal in human depravity, or so well calculated to destroy the youthful mind, to fill up the imagination with images of moral pollution that must necessarily arise in the mind, as these letters. No cultivated man has heard them read but has experienced a feeling of disgust. There is nothing in the range of literature like them—why, even Little’s poems themselves would ornament the literature of this country compared with these letters. You heard

many of them read, containing sentences, I venture to say, that no respectable man among you would permit to be read by his wife or his children. And these are some of the arguments that have been advanced by virtue of the introduction of those letters which were forced upon your hearing by the defendant at the bar, and upon your inspection. These are some of those peculiar, erotic productions which are presented here—an insult to the refinement and intelligence and morality of the age.

Nobody stands here, upon the part of the prosecution, to justify or even palliate the conduct of Mr. Crittenden. If public opinion is to be taken for anything, we have been trying Mr. Crittenden instead of Mrs. Fair.

Not content with advancing ideas which sap the foundations of your entire system, legal and moral, we have an advocate who, in the ardor and enthusiasm of his cause, declares to you his conviction that she was an angel in the hands of God to go and sacrifice this man. Such sentiments were never before uttered or taught in any system of morality, religion or philosophy ever known in this world. You could not find a parallel for them among the followers of Mohammed or Brigham Young. And you are asked, as sensible, prudent, deliberate, well-minded, honest men, to indorse this doctrine by the release of this defendant, and by that indorsement let these opinions permeate the community in which you have your wives and your children are growing up. Gentlemen, with all due deference to his Honor on the bench, and to the many distinguished and eminent gentlemen who have been in this court-room during the trial, I shall be only declaring the judgment of many who have been in attendance here, when I say that the defendant at the bar has shown herself the greatest man that ever entered this court-room. Why, gentlemen, there was nothing that would “phaze” her on the stand. She sat there perfectly self-possessed, a complete embodiment of intellect, able to construct her answers with a force and persuasion that Corinne could not have surpassed. I say it is a libel on her intelligence, it is a slander upon her intellect, to say that

she is or was insane. I could not help but think that if I could have obtained a fair look at her countenance, at times I would find her smiling at the ingenuity of her counsel in building up their theory between her and justice. Such a flimsy excuse as that she at any time in her life was insane, is a mockery. There is not a particle of evidence here that she was at any time insane prior to this fatal day. None of those clouds that overcame her at the time of the assassination had ever before obscured her mental vision. None of these singularities, much less crimes which insane persons are in the habit of committing, have been proved ever to have been committed by her prior to this time. She has lived her life according to her own statement, thirty-two or thirty-three years, down to the commission of this fatal act, without word or deed indicating that she was not in her right mind, and able to control her actions. Certainly nothing of the kind was observed at the time of the firing of the pistol. Her precision in firing this postol was remarkable. In the scene between Death and Sin at the gates of hell,

"She at his heart did level a deadly air;
No second shot her mortal hand intended."

The most expert of your gunners upon earth would not have accomplished the act more thoroughly and completely than did this defendant when she shot her victim. The lady, by virtue of this act was placed in the City Prison. When she gets in there, Dr. Trask is called, and makes a very slight examination, but upon that he declares she is not insane. A man of his vast experience, a man who was capable and bold enough and fearless enough to declare the ablest of all American writers on this subject to be out of date, does not hesitate then to pronounce her insanity a sham. That was his opinion up to the time when he became the retained physician of this woman; then, he changes his opinion. But in one thing he does not change. It is his constant devotion to her down to this hour.

We have a lady here of the name of Mrs. Morris who is a friend of Dr. Lyford's. In some way he found and

brought this lady down there as the nurse of Mrs. Fair and upon the stand here by the magic of some question she is transformed into an expert on insanity. The only two persons she ever attended was for a short time a lady who was insane and her husband who had been insane for eight years. Now if that woman talked to her husband half as much as she talked in this court room it is a great wonder that he did not die in the first instance, instead of becoming insane. You heard her testimony; these were the only two persons she had attended who had any affection of the mind or intellect, yet this lady takes the stand coolly, and tells you in the most dramatic style the story of this defendant's madness. She tells you that her strength was supernatural, that she never slept, that she never ate, in fact that she was a specimen of living death. You are asked to adopt her statements added to some other testimony and upon it you are to declare this defendant not to be a proper subject of punishment, for the reason that at the time of the shooting she was insane—for the reason which they assume upon such testimony that at the time of such shooting she was non-volitional.

I hardly think she was a woman of that discernment, of that penetration that could read the mind of the defendant, whose powers of simulation were great, as you always see with those who exercise that peculiar power upon the stage where she has figured. You will see it illustrated there and in a thousand and one ways in your ordinary life. You see "King Lear" so enacted that it becomes a question of extreme doubt whether the man assuming the part is really deranged or pretending insanity; and unless the spectator is familiar with the scene or very discerning and knows that he is in a theater, he may be and is at times, unable to distinguish between the individual impersonating the character in the play or a real individual who is insane. That suggests to my mind a celebrated incident related in "Tom Jones" where certain persons have returned from the theater having witnessed the acting of the great Garrick. One inquired how the others liked the performance. The reply

of another is "The King is the man for my money." Says another, "The King was very well played, but did you see Garrick? Did you notice Garrick? Anybody could act like Garrick," was the reply, "because he acted like a crazy man. I did not know whether he was crazy or not." That is one of the instances of perfect simulation.

No doubt you have all read and seen the tragedy of "Hamlet." It is when the players are acting a mock performance, describing scenes which have been written by Hamlet himself depicting the murder of his father by his uncle; and when Hamlet, the scholar, the student—the man of the world, witnesses the acting of the play as it is rehearsed before him by the performers, when he witnesses the weeping of the player for Hecuba he exclaims:

"Is it not monstrous that this player here,
But in a fiction, in a dream of passion,
Could force his soul so to his own conceit,
That from her working all his visage wann'd;
Tears in his eyes, distraction in 's aspect;
A broken voice, and his whole function suiting
With forms for his conceit? And all for nothing!
For Hecuba!"

The capacity of imitating, of simulating passion or sorrow, was so powerful that even with Hamlet it brought forth an expression of amazement, or a soliloquy of wonder. Hamlet, the scholar, the student, exclaimed:

"What's he to Hecuba, or Hecuba to him,
That he should weep for her?"

Here was a perfect illustration of his power of simulation. Is it wonderful then that this woman with all her experience, her discrimination, and her knowledge of the world, and in the possession of all her faculties, knowing that she had great objects to subserve, should be able to put on this mock character and play it as well for the time being, probably, as any great performer you ever saw upon the stage so as to deceive even the medical experts who have been before you? And you will remember, gentlemen, that she was at one time upon the stage herself.

In the city prison she is visited by Dr. Trask who is, as he at that time states, under the impression that she is shamming insanity. I am inclined to think that Dr. Trask must have been mesmerized by the defendant. Here is an old lady who has been connected with the State Insane Hospital for some two years and a half or three years and so far as mere experience is concerned, is infinitely superior to any of the doctors who have testified in this case because I suppose she has attended more insane women—that having been her department there—than all these doctors put together. She is ignored however and not permitted to state facts as an expert as Mrs. Morris has been, who had only attended a crazy husband and one insane lady for a week or two. They bring Mrs. Morris here and put her on the stand and she is to be regarded by you as *comme il faut* upon that whole subject. This lady, Mrs. Kelly, tells you that she was in defendant's room three or four times a day during the whole period she was in the county jail, from some time in November down to the time Mrs. Kelly testified and she tells you that Mrs. Fair, never during that time, in any manner, form or shape indicated by act or indicated by word or in any way exhibited anything that approximated to insanity. She says she always saw her with newspapers before her; that sometimes the little child was there, her daughter, and sometimes her mother and sometimes her doctor, but during the whole period of time she was in the county jail there was nothing she saw that seemed to assimilate to insanity on the part of Mrs. Fair, or anything else except that she was a well conducted woman. This witness was the matron of the jail, having no interest in this transaction. She exhibited great ignorance on that point particularly—she did not even know me. She never saw any acts out of which you could carve this insanity, saw nothing and heard nothing. Yet Dr. Trask goes upon the stand and from the terrible description he gives of this woman, added to her condition from the time she left the city prison till this time, he comes to the conclusion that when she was there she was nearly as much insane as she was at

the time she fired the pistol. One indication of her insanity he says was that she would not eat the meat and drink the water of the county jail; I think she was very sane in that.

When a gentleman of experience and character and of all the pretensions of Dr. Trask comes into a court of justice and seeks to throw himself as a shield between a violator of the law and its just administration, he should not be treated with any more regard than any other witness. If the theories advanced by Dr. Trask are correct there is no safety in the community, but the whole system of your jurisprudence will prove a mockery and your trials by jury a delusion and a snare. What safety is there for human life if Dr. Trask is correct? Why, the judges of your courts and your juries would not be necessary. Why not select some of those disciples of Esculapius or Hypocrates, what ever they are called, and make them pensioned officers of the government and appoint three or six or nine of them as the case may be, to pass upon these questions. Why not wipe out your system of jury trials and the administration of justice, abandon your judiciary and let these learned doctors of madness or sanity pass upon all these questions? That would be the only thing to do, because if this doctor can step into Court here and upon their *ipse dixit* the jury are to decide, why the thing would become ridiculous in the eyes of the world and therefore the whole matter of the judiciary system would be destroyed at once and obliterated from the law books. You should not have a jury or a judge but you should have a standing commission or committee of doctors upon a salary and whenever a person is accused of a crime, you should bring him in to some place—you could not call it a court room—and let that commission pass upon the subject; because the practical workings and teachings of the doctrines of Dr. Trask as put forth are that no human being on earth is properly a subject of punishment; and especially they are not in cases of blood-letting or homicide.

There is another point that the Doctor makes as one of the pretexts of this insanity. He says that this woman was

afflicted with insomnia, which, I believe, means sleeplessness. Why should she not be sleepless? Had not she murdered sleep? How could she sleep? Why, gentlemen, in this wide world she could not have found a lounge upon which she could rest her wearied limbs. That

“Sleep, that knits up the raveled sleeve of care,
The death of each day’s life, sore labor’s bath,
Balm of hurt minds, great nature’s second curse,
Chief nourisher of life’s feast,”

she can never feel again on earth.

“Macbeth hath murdered sleep.”
“Glamis hath murdered sleep; and therefore Cawdor
Shall sleep no more; Macbeth shall sleep no more.”

Insomnia! “Shadows tonight have struck more terror to the soul of Richard than can the substance of ten thousand men, armed all in proof and led by shallow Richmond.” No sleep! The great God of Nature has fixed it as one of his penalties, attached to one who sheds unjustly the blood of a fellow being. No Sleep! Why even when physically considered alone her nervous system must have been shaken to the very center. No sleep! Why, she must have been the incarnation of inhumanity trebled if she could sleep after such an act as that. Did not the ghost of the murdered Banquo rise up before her eyes? Was he not there day and night in every hour and in every place shaking his gory locks at her and bidding her meet that doom which must necessarily await her? Her dreams by night, her thoughts by day, every element and character, all her motives, feelings, joys, sensations—all brought into active play at the very thought of this terrible and bloody assassination. Talk about her, with all her emotional qualities, with all those qualities that made her to a great extent, in the opinion of one of those learned doctors a very remarkable woman—was she the woman to sleep—sleep upon the very grave of the murdered Crittenden? Yet these doctors, Lyford and Trask, give you as an instance of her insanity, that state of what they call insomnia. Is it possible that the learned pro-

fession that is said to be the curer of the human body, while religion is curer of the divine—one of the body and the other of the soul—is it possible that it can be so prostituted that its devotees allow themselves to enter the portal of justice and become witnesses on behalf of one against whom the most damning facts have been established? Can that profession be thus prostituted in order to make it a shield between the law and its just victim? Your Honor would not permit me to read from Lord Brougham upon that very point that I desired to call the attention of the Court and jury to, in which he inquires what right there is, or what the medical profession is, that demands any more respect than any other vocation in life. Gentlemen, what do they know about insanity? There never was a medical man until late in modern times that ever wrote or probably ever knew much about the human mind. None of the great philosophers and metaphysicians that have ever treated upon the subject of the human intellect belonged to the medical profession. The very principle of reasoning, the very theory connected with the peculiarities of the human mind that now govern the world, emanated from another source, and the thousand and one great writers in Germany, in France, in Italy, in England and in the United States that have ever written works worthy of the slightest attention, never were physicians. The greatest disquisition ever written upon the subject of the human mind, the book which at this day, certainly, is regarded more than any other, as expounding the rules by which the human intellect is governed and controlled, in all countries, was written by an individual who never was inside of a drug shop and knew nothing of the compounding of a prescription; and that individual was Locke. He did not belong to the medical profession. That is an inductive science, to say the best of it, if it be a science, and the individual of ordinary intelligence sitting amidst a lot of insane people in an insane asylum becomes and is far better qualified to deliver an opinion upon the subject of insanity than any doctor, except where a doctor, with perhaps higher intelligence, and an equal opportunity,

may come before a Court or jury for examination on that subject. Therefore, I say, it is a mistaken view in regard to these physicians, that they are the sole judges of insanity. The ablest writer in this country, now long since dead, who discussed these subjects connected with metaphysics, never had anything to do with doctors, and that man is the great Edwards, of Connecticut, the man who wrote a work upon the Will. Jeremy Bentham never knew anything about medicine, except as a mere matter of science—he might have known something in that way. Kant was not a physician. I might go through a long range of authors in America, as well as in Europe and except here and there one individual, you would find none who knew anything about medicine. All the great men in the world who have discussed the qualities of the mind and explained the laws which guide its operations, have been men who never were physicians. I believe Aristotle did keep a drug shop, but that is about the extent of it. The great thinkers who have theorized upon the human mind have been unacquainted with medicine. Therefore, I say that these doctors, whilst everybody should respect them in the line of their profession and of their practice yet when they go within a court room and seek by their abstractions to place a barrier between justice and the guilty criminal who has offended against the most important laws of God and man, when they would seek to divert the stream of justice and prevent the accomplishment of those just ends, in form of penalties for the commission of crime, which the law has prescribed, then they ought not to be treated with any more respect than any other class of beings who might present themselves under similar circumstances.

In view of the various theories which have been advanced, I think we have a right to thank God that old Lavater is out of the world. A doctor is called for the purpose of testifying and he tells you that he knows the defendant was crazy, or subject to aberration of mind, by the expression of her eye. That, I believe, was Dr. Deane. And the inference you are expected to draw from that is, that she must necessarily have been insane when she committed this act, because

she did not look like a woman who could commit a crime of that kind, being entirely emotional in her character and susceptible to sudden movements, and he based his reason for saying that upon the expression of her eye. Why, gentlemen, the defendant at the bar is calm, cool. If she concluded to commit any act, her nerve and her intellect would force her to do it. It is not the first time in the course of human events that women have been charged with the commission of public crimes. Men as able as Dr. Trask and certainly men as able as Dr. Lyford, have written upon this subject. They tell you what woman can do if she once makes up her mind to do it. A man who has thought deeper than Kant, and was a greater observer than Thackeray or Dickens, has told you that women, and Queens, too, when they have concluded to perpetrate an act which to the world might look objectionable, can bend every nerve and fibre and vein and artery to the performance of the terrible deed, no matter how terrible that deed might be.

"Come, you spirits
That tend on mortal thoughts, unsex me here;
And fill me from the crown to the toe top-full
Of direst cruelty! Make thick my blood,
Stop up the access and passage to remorse;
That no compunctious visitings of nature
Shake my fell purpose, nor keep peace between
The effect and it! Come to my woman's breast,
And take my milk for gall, ye murd'ring ministers,
Wherever in your sightless substances
Ye wait on nature's mischief. Come, thick night,
And pall thee in the dunnest smoke of hell,
That my keen knife see not the wound it makes;
Nor heaven peep through the blanket of the dark,
To cry, 'Hold! hold!'"

That is a picture drawn to illustrate the human intellect in woman, by a man equal, in my judgment, in knowledge of the human mind to Dr. Lyford. There you have the finest of human portraits drawn with capacity of woman when determined to perpetrate an act—to use the language of Buckle—"by the greatest son of Adam that ever yet walked upon the plains of earth." It is not a fancy picture, it is

not a picture that could be drawn from pure imagination alone. It is a picture that in a measure has its origin in history, and it characterizes many distinguished or prominent women who have arisen in memorable fame in various portions of the world.

Now, Mr. Cook has endeavored to make a point in regard to this matter of so-called experts because no physicians have been called as experts on the part of the prosecution. The answer is manifold, but I will give you one answer. The prosecution did not think very much of the testimony on the part of the defense, that is one reason. Then the prosecution have not sixty or seventy or eighty thousand dollars with which to pay medical gentlemen to come here and dance attendance upon this Court twenty-nine or thirty days. But the real reason after all is that their doctors testified to nothing. You are the judges of insanity here; with you lies the question of sane or insane, because with you lies all the responsibility that will follow from your verdict. You are supposed and justly so, I think, to be intelligent men. With you and with you alone, rests all the responsibility; not only all the responsibility of this particular case, but all the responsibility that will necessarily flow out of it both as to law and as to morality and religion. Are you going to pin your faith, to sacrifice your reputations, to have your names paraded in the community and sent down to farthest posterity as a class of men, governed, controlled, influenced and directed by a man like Dr. Lyford? Are you, gentlemen, who have been taken from your homes, your firesides and families, to try this case—you who are paying your pro rata towards sustaining society, contributing your share to keep up the harmony of the law—are you going to pin your faith upon a man like Lyford, the character of whose intellect was so great that he could not even remember the time he received his diploma?

Where a man seeks to prevent and interfere with the administration of law he becomes a dangerous member of society instead of one of its supporters; a man upon whom the eyes of the community should look down with suspicion,

to say the least. And no unfledged doctrines, no perversity of intellect, no employment of polysyllables, no technical phrases—which most of those who employ them are not able to pronounce properly—should ever form the basis of your judgment.

Dr. Trask has told you, gentlemen, that among the indicia of insanity as witnessed by him after the defendant was transferred to his care by Dr. Lyford, was that she threatened to kill her mother twenty times and that she threatened to kill her child, I do not know how many times. It is very strange, if the evidence of Dr. Trask is entirely correct, that this lady, subject to such spells, indulging in such threats while in such spells, should threaten so many persons and so often to do some injury and yet injure no one. The fact is apparent to us that neither her mother nor her child have been injured by her to the extent of a single hair of one of their heads.

Mrs. Fair is a woman, bright, desperate, yet cool. She finds herself having yielded to a feeling which it would have been far better for her and for society if she had not yielded to, isolated in prison. Her experience of the world has taught her that, having stricken down the foremost man of the state, she must present herself in Court in the full possession of her intellect, and perfect mistress of herself; and that the thousand and one little things that will be noticed in her conduct and conversation in the prison, can be made a subject matter of testimony in Court. And she believes that the generous, chivalric men composing a jury in California, will never allow themselves to sacrifice the life of one belonging to the same sex as their mothers and their wives. She played all these little tricks without doing an injury to anybody; and when she gets into Court and is placed upon trial, her medical attendants relate the story of her conduct, and base upon it their theory, and their statement of their conviction in regard to her insanity. Well, now, if this woman be the woman she has been represented to be here, if she was the woman that her medical advisers have represented, in the habit of getting into these spells,

when she was frantic and felt impelled to murder her own offspring, how is it that her medical adviser never took any steps, or made any suggestion, or did any act to call the attention of the Government officials or prison custodians to her during all this period of her imprisonment? If he could not find the Sheriff, how was it that none of the minor custodians of the jail were informed of this terrible condition of hers and those threats of violence, showing that she was a dangerous woman, who was going to kill her own offspring, or to slaughter the one of whom she is herself the offspring? We are left entirely in the dark with regard to her whole conduct in the prison until this trial commences, and then these gentlemen come and testify to these things, and ask you to accept them as evidence of insanity and acquit her upon them, basing their right to make that demand upon the ground that they are medical experts.

Mrs. Fair killed this man, beyond the possibility of a doubt; a man who had no superior in the State of California in his profession. The boldness and effrontery of the act attached to it a romance unlike the great mass of cases of human slaughter. She thought she had full protection in her fortune and in her sex, and in the gallantry of the jury, if a jury was ever called upon to try the question of her guilt or innocence; that if she could not get this man, at least, it would be some credit and satisfaction to herself and her pride, that she would place him beyond the reach of ever being obtained by anybody else. It was fame she sought when she killed this man. It was to send her name broadcast—paraded in the public press of the country—that she concluded, if she did put her hands in blood it should be the blood of one of the Lord's annointed, and, like him, who for purposes of fame razed to ashes the great wonder of the world, it was "the aspiring youth that fired the Ephesian Dome, who outlives in memory the pious fool that reared it." If she could not get this man and the barrier was now made eternal, she resolved: I will put my name on a pedestal which will stand as long as the history of the age. I will do as he did, the aspiring Ephesian, who outlived in memory

the man who erected the mighty dome he fired. She did not want Mr. Crittenden. Why, she had him, if the theory of this free-love doctrine be correct; and, in the name of God, what more did she want? If she was born for him and he for her, what object under Heaven was there, or what necessity for a marriage? Why should she kill him and leave these children and grand-children practically fatherless? Why should she seek to be the instrument of separating those whom God had joined together? Why should she attempt to drag down to ignominy and death the man whom she claims herself was the best friend she ever had on earth? What was her object? Marriage could not sanction anything between them. The man was her's according to the doctrine of free love. The mere standing up before an altar could not sanctify the feeling that existed between them. He was her husband by the laws of God. She was his wife by the same laws. If her theory with regard to these peculiar doctrines is correct, there was no philosophy in that part of her conduct. No; she wanted position; she had the fortune, she had the ability, she possessed the attraction. Her ambition was to ally herself to a man such as Crittenden—a man of character, family, position, and high professional and social standing—so that, if ever she had during her entire life committed any peccadilloes, her alliance with this man would wipe them all out; his protecting arm would shield her, and he being with her as her husband would have lifted her up to that height to which every ambitious woman aspires, whenever they have money to sustain the position to which they aspire.

April 26.

The defense maintains that on the occasion of the shooting of Mr. Crittenden that she had no knowledge whatever of what she had done; was entirely unconscious that she had shot him or drawn a pistol upon him; that she became bewildered from two causes; first the voice, secondly the appearance of Mrs. Crittenden and suddenly carried away by some influence that is unknown to science and certainly to experienced life, he received a ball in the region of the heart

from the effects of that. Now the whole of that theory, gentlemen, is inconsistent with itself. There was no voice that this woman heard except the genuine, natural voice of Mrs. Crittenden—if she heard it at all. And as to her not being fully conscious and aware of the act which it is alleged she committed, it is at once made manifest by the declarations of the witness herself and by the declarations of other witnesses who testify to her conduct after the shooting. At the time of her arrest she was looking for a police officer to give herself up.

You have heard that this theory of unconsciousness was one which left her without any knowledge of the act committed—of her incapacity to recollect anything about the act. You have witnesses testifying that within five minutes after the commission of the offense, she had withdrawn herself from the scene of action; had retired and was mingling in the cabin with the passengers upon the boat. Yet, when accused as the person who committed the act, she then and there acknowledged its commission and gave reasons for having committed it. Now, if that be a correct version of the testimony on that point, then this theory that has been advanced in regard to this unconsciousness on her part of its commission must necessarily fall to the ground.

The defendant comes into this Court surrounded with a good deal of the paraphernalia such as is attached to theatrical representations. In the first place we have a magnificent lounge that is never used. In the second place, we have warm foot-baths—

Mr. Cook: They were brought in here to use, if necessary. Judge Campbell would not try the case for a moment, he said, if she laid upon the lounge.

Mr. Campbell: I did not propose to try this case with the defendant on a lounge, and if she was too weak to sit up, as a matter of course the trial would have to go over till she was in a condition to defend herself.

Mr. Cook: And the lounge was used by her during recess.

Mr. Byrne: Well, we had a lounge. That is one of the peculiarities of this case. Then, we had warm baths for the

feet. That is another peculiarity. We have had the gentleman with his eight-ounce phial of whisky. We have had sighs, tears and groans, all of which, in my judgment, were calculated to affect the minds of men who are predisposed to look with leniency on the conduct of an individual charged with the commission of a public offense, particularly when that individual is of a different gender from ourselves. It required but a curtain, and I say this with all deference to to the Court—it required but a curtain and a bell to convert the whole of this transaction into a grand judicial farce, of which, I am sorry to say, I am playing a very important part. A lady comes into Court, the widow of her victim—the mother of children and grand-children, is brought by the necessities of the law to testify, and very reluctantly she was brought to testify to certain points that were necessary to be established for the protection of society. While that woman, in all her agony of feeling—the recollection of her murdered husband freshly in her mind—in sorrow and in weeds, that woman, while she is giving her testimony in answer to questions, with all the delicacy and all the refinement that belong to a woman with all the feelings which attach themselves to a woman who has children, and who understands her duty and the terrible solemnity of that oath that was administered to her—while she is relating the story of her sorrow and her misfortune, up jumps the principal actor in this case and declares her to be a liar!

This judicial entertainment is all but converted into tragedy, even in the Court room. Secure in her wealth and protected by the gallantry of the people of the State, by reason of her being a woman, she takes, as it were, the very law by the throat, and defies it even in the temple of justice, or where it is supposed to be administered. This was the woman who was on the *qui vive* from the empanelment of the jury down to the present moment, and that permitted no thought to escape, no suggestion that could possibly subserve her interest to be overlooked by her counsel. That was a living and a breathing refutation of any theory advanced by doctors or otherwise as to her having been insane at any

period of her life. No; it will not do. These periodicities referred to by the doctors would set eleven-twelfths of the women in the world crazy. If these theories are correct, why, the mothers of posterity would produce nothing but a band of fools. I am rather inclined to think after hearing the testimony of some of these physicians, that they have read *L'amour* of Michelet, a Frenchman, who, in the first instance, idolizes women, taking from them their blood and their brains, and then turns around and bows down before them as an idolator. There is no practical sense in the theories advanced. It is a reflection upon our mothers, upon our wives, and will send down to posterity a nation of fools, if the theory of this doctor is correct.

These gentlemen are at all times discussing matters that there was no reason in the world for introducing, for the consideration of this jury. And your daily journals that have thought proper to insert these things in their columns will live, it strikes me, to regret the hour that they have permitted their columns to be polluted by the foulest extracts of a trial on the one hand and the declarations of doctors touching the peculiar ailments of women on the other.

It is amusing rather—and it is a serious thing to say in a Court of justice that anything is amusing—but it is trifling, at least, that every five minutes of your valuable time during the twenty-eight or thirty days, whatever may be the number of days that you have been in attendance, was devoted to the administration of some drug in the nature of whisky, because the defendant had one of her spells, or to adjourn for hours, while you are taken from your families and taken from your business. You are brought here every day to the extent of nearly a month to witness these things that form no part of the administration of justice and do not enter into the consideration of this case. But the law, as far as the judgment of its officers is concerned, has permitted it, and having been permitted here it takes from me the right to comment particularly, as I otherwise would do, upon this peculiar mode of conducting this defense. It struck me at the time that if this woman had been an ignorant creature,

if she were without money, if she were thrown on the charity of the cold world, and indicted by a Grand Jury, arraigned in Court, and a jury impaneled to try her upon the crime for which she was indicted, all these scenes unknown to the law, all these various individuals who have stepped forward at the sacrifice of their valuable time to remain here to attend to it as long as you have done—all of these things would have been wanted. The poor creature would be placed upon trial, the jury would be impaneled, and twenty-four hours would be sufficient to arrive at the disposition of the whole proposition.

“Plate sin with gold and the strong lance of justice breaks;
Clothe it in rags and a pigmy straw doth pierce it.”

O, the omnipotence of gold! It is by virtue of the great wealth of this woman that this scene, in a measure a mockery of justice, has been perpetrated in this Court, and in which you, gentlemen, and those connected with this transaction, have played a greater or less part.

We cannot get Mr. Crittenden here. There is no process known to this Court by which we can bring that unfortunate being into its presence. There is no power by which we can invoke the grave and bid it cast forth the victim of this woman's bad action. This lady knows that fact, and has given her story in her own way, and asked you to accept that story as correct, and, accepting it as correct, to acquit her. Now there is something in this case that looks to me as though the truth after all, being very powerful, must prevail. When the defendant was on the stand she gave you a very graphic account of her feelings in the city of New York when she was in the act of destroying all the letters of Mr. Crittenden. She stated that arising from the fact that there was a lady there, a Miss Buie, who accompanied her to Havana, that while she was in the act of throwing these letters in the fire, Miss Buie saved the great mass of the correspondence and then goes on and tells you what her feelings were and how some of these letters that were saved are thus accounted for being introduced into this Court as letters from Mr. Crittenden. Now the prosecution never knew that the defendant

at the bar ever had any of those letters belonging to Mr. Crittenden. You heard her in her testimony as to the disposition she attempted to make of these letters in the city of New York. That was her testimony on the day she was testifying. From that account you will remember that she was going to destroy them all, having one of those spells upon her—a feeling of great indignation; and the letters were saved by this lady who was the *compagnon de voyage* to Havana. Now, in a letter written in the city of New York, dated September 11th, 1867, New York Hotel, here is the language which the defendant indulges in, in regard to the disposition of these letters. (Letter 14).

Here is a woman who tells you under oath upon the stand what she did, and what she attempted to do with certain letters in her possession from Mr. Crittenden; and when we get among the letters introduced in evidence here, when we get letters bearing the date upon which she attempted to burn them, dated New York, at the New York Hotel, we find that she then and there gives birth to sentiments that have no existence in fact, if the story upon the stand is correct. This woman comes into Court and tells you with a degree of collectedness the most terrible theories that were ever advanced in any Christian community in the world. She wants you to indorse these theories, and claims that you must not test this woman by any rule that was ever known or acknowledged by law, morality or religion. For the purpose of making her claim still greater these specimens of modern literature in the shape of these letters are brought here. This woman comes into this Court and with unblushing face recounts to you the history of her association with Mr. Crittenden and gives to you here the reasons why she should put forth this insult to the intelligence of the age, this contradiction of every principle of morality and right that has ever existed in any country that has the slightest pretense to civilization. But she is a woman and the age in which we live is too *enlightened* for any woman ever to be convicted of any crime. She comes into this Court and instead of subjecting herself to a trial, it is Mr. Crittenden that you are trying. Permit me

to say to you, gentlemen, that we have nothing to do with the shortcomings or peccadillos of Mr. Crittenden. Mr. Crittenden is not the only man in the world that in hours of weakness and infatuation has yielded to a woman with all the power and strength of defendant at the bar. History is filled with innumerable examples of men far superior to Mr. Crittenden who have yielded to the fascinating power of woman. Marc Antony threw away a world to recline in the lap of the Egyptian Cleopatra; within our own day and within our own generation you have the signal instance of Lord Nelson yielding up family, fame, character and position in the lap of Lady Hamilton. We need not go to the other side of the Atlantic for the purpose of finding out examples; we can find them in our own midst and in our own history. If you are, upon a case of this kind, to make culpable, outside of the moral law, the individual who is unfortunate enough, in the hour of his weakness, to forget his relations to society and to his family, and make him the subject of punishment, instead of the individual who is the occasion of that weakness by her acts, make him the victim instead of the one who has committed so great a crime, you are committing an outrage upon society. And if you were to recreate society, if you could establish legislatures or codes of law by which such acts as these charged upon Mr. Crittenden might be made capital offenses, the probabilities are that you would have to increase your population to an alarming extent to punish the culprit; whether that be so or not, the important fact cannot be overlooked, that we are not trying, that you have not jurisdiction, and that you have not the power to try Mr. Crittenden; and that not one solitary fact has been introduced here touching the conduct of Mr. Crittenden towards the woman which can in the last degree affect the interest of the defendant. The *liasons* have been made public; and there is nothing connected with these *liasons* that in the remotest degree reflects upon the character, or honor, or integrity, as failing to discharge the various duties that society has laid upon him, outside of his weakness, an erotic weakness, that of yielding to the temptations

of a woman strong enough to seduce him from the altar itself.

Therefore, in throwing the blame upon Mr. Crittenden, which is the tendency of their whole argument, you draw attention from her share, to whom

“Some gentle errors fall—
Look in her face and you’ll forgive them all.”

That is about the tendency of their whole argument, that she is a woman. This weak man, weak upon that point, was drawn from the paths of virtue.

She had got him so completely under her control as to forbid any line of conduct, except that which was harmonious with hers. They make these facts manifest by the introduction of letters, and your judgment is sought to be transferred from this most outrageous and terrible assassination to the unfortunate man who became a victim to the wiles of the defendant—such a victim as Calypso sought to make of Telemachus, in the old story. You can not do it. It would be an outrage on the law—it would be violating your oaths to do it. The day is too far advanced in refinement, civilization, and in knowledge of right, for any twelve men of even ordinary intelligence to be carried away by the testimony of a witness—for she is her own witness in this case—the testimony of a witness that would enunciate the doctrine that the defendant did enunciate upon the stand. We do not belong to any school of free lovers. We are here to try a woman for the crime of murder under the laws of the land. You are here, and only here, to sit in judgment upon this woman as her peers, under the same law by which you took the oath. This Court proceeds by the very same law. You are not authorized—it is not your province, it is not your duty, but upon the other hand, you would be violating that duty if you would attach the slightest importance in the world to the conduct of Mr. Crittenden in his relations to this woman.

I say, gentlemen, that a woman of her experience was incapable of being deceived. If she had been a girl, one unpratised, unsophisticated, whose innocent heart had been car-

ried away by the captivating qualities of her seducer; if she had been ruined and blasted, to use her own language, by the conduct of a man who had deserted her in that condition, a mere statement of the case would be sufficient to protect the interests of the people and the prosecutor; on behalf of the people, I would submit the case to the jury without a single word. We have no such thing here.

There is scarcely any standpoint from which you can regard it with any sort of patience. When she hears that Mrs. Crittenden is about to have a baby she has one of these spells, and I presume that she is relieved from one of these spells, if at all, by the administration of that kind of liquid which Dr. Trask supplied her with during the progress of this trial.

Now, I am not speaking of this woman writing this letter, but I am speaking of the atrocity that was committed by any woman upon earth being permitted to write in this way. Why, it is an insult to nature itself. It is an outrage upon that good mother and good widow. It is an insult to the marital state of the civilized world. What, a woman having had three or four husbands—three up to that time—so far as we are informed—should dare, should dare to take a pen in hand and write the terrible and atrocious sentiments, so offensive and so insulting to the sensibility of every well-constructed human being with regard to that virtuous wife, who has reared a family, proud of their descent and proud of their name; that mother, so perfect in all her affections and her service; or that husband should be denounced for permitting that mother to enjoy those rights which belong to the married state. Why, gentlemen, if that be free love, if that be one of the results of this new-fledged system of free love, I think we had better petition Congress to convert all our statutes upon this subject into harmony with the provisions of the creed and code of Brigham Young.

Her brain is going mad and her heart is ready to burst, she says in her letter, and yet she lives in the full enjoyment of the measure of health which people generally experience. I should like to know merely as a matter of fine arts, where

was the ruin that attached itself to this woman—"A splendid ruin, a wreck." Where was the wreck? It certainly was not in that department of existence to which man generally pays the most attention—money. There was no ruin there. If there was any one ruined in a pecuniary point of view it was Mr. Crittenden. He died without a dollar. This woman had then, as she has now, an immenes fortune. She was indulging then in all the luxuries of life. She had been traveling from one section of the Republic to the other, and probably spending her immense income. Where was the wreck? I wish to show that letter to the jury, that they may examine it with respect to this declaration of wreck and ruin. See, gentlemen, if there is any ruin indicated in the chirography or orthography of that letter. See whether it is written by any one on earth except one in the full possession of all her faculties, who employs all her faculties, who employs her talent and evinces her education in its preparation, for the purpose of producing the special and obvious effect for which it is intended. If you will notice all the various signs made in that letter by the writer, you will see that they are employed strictly according to the grammatical properties. Punctuation is all there, and every sign is set down according to the rules of the grammarian. The exclamation points are all there. Every mark which belongs to the division and distribution of these sentences is placed there with scrupulous care and precision. Is that the writing of a ruin and a wreck? And yet, she tells you in one part of that carefully-prepared missive, that her brain has nearly gone mad, that she is nearly crazed and that her heart is nearly burst. Herself a woman—possessed of an immense amount of money with the power and capacity to go where she likes, to travel where she may, to enjoy the amusements of the world, according to her disposition, here she has written a letter to Mr. Crittenden of this character—she being in the State of New York and he in San Francisco. The sentiment contained in that letter was never penned by a mortal being except by one who was in the cool and perfect possession of all her faculties and was deliberately writing for the purpose of attaining an end.

There is nothing set down there without caution or without design; nothing in that letter excepting the literal language itself which would indicate anything like craziness, madness or broken-heartedness; not the slightest indication of tremulousness or nervousness or any other indication that that woman who wrote that letter was not as sane as any human being ever was in the world.

About these letters, the whole of them have suggested to my mind the refrain of the French song:

"Her weary song the whole day long,
Was still, *L'argent, l'argent, l'argent.*"

All these letters after indulging in this kind of sentiment, invariably wound up with a call for *more money*. It is "my Crittenden and my ducats; my ducats and my Crittenden."

"Never blame me when I am exacting and want money. Money! What else have I? Pay the note as quickly as you can. It will be such a relief to me."

This broken heart, this wounded spirit, this ruined life, this frenzied brain—any one of which ailments would have killed her, and all combined would have set her far beyond the confines of eternity—this woman who writes as a splendid ruin and a wreck, with an unsatisfied longing for love—will experience a perfect relief from all her distress if he will only pay that note.

"Never blame me when I am exacting and want money. Money! What else have I? Pay the note as quickly as you can. It will be such a relief to me! I was cross and impatient because it is nearly the 12th. I have been so for several days; everything frets me. I feel angry at everybody except you, darling. Good-by."

Well, it appears here that the payment of this note will completely satisfy and restore her to perfect health. It should be paid at once!

As I inquired before you yesterday, what was her object? Why should any woman situated as she was, seek to violate the laws of both God and man in the mode and manner in which she attempted to do so? Did she not expect when she killed Mr. Crittenden that a part and portion of her defense would be that this man had formed an intimacy with her,

whether proper or improper? I know nothing about it; it is for you to pass upon that question. Did she not expect to parade these letters before you or before a jury called upon to sit in judgment—if she was ever called to trial—and expect that upon these letters she would be acquitted of the charge of having committed any offense against the public law?

Why, gentlemen, the man who forms an association, a *liason* with a woman is responsible—if there be no law in the state prohibiting the association—to the moral law, to the law of the society that may taboo him and to the law of that power against whose judgments there is no appeal. If a man so far forgets himself as to permit himself to be led into the meshes of a woman when he bears another relation that has been sanctioned by religion and by the acknowledged rules of society, he would be censured merely as a man. He can be removed, if you please, from the presence of those whose tastes constrain them to look with severe reprobation on such associations and the parties to them; he may be pointed out as one who has violated the marital oath; he may be regarded as a man who is not fit to associate in that class of society which has some regard and respect for the laws of religion and morality. But because that man has indulged in that *liaison* with a woman, the doctrine that she can slaughter him when she pleases and then come into Court and reveal all the correspondence incident to that *liaison* as a successful defense, is one of the most preposterous and absurd ideas or doctrines ever heard of in the civilized world.

It was the legality of an alliance with Mr. Crittenden that she wanted. She had everything else in life that she could desire. She had, so to speak, in a corporal sense, the possession of Mr. Crittenden, but she wanted a legal union with him, and if the theory which has been preached here by herself and her counsel—if the theory of morals which she advances is correct—that the mere form of standing up before an altar or before an authorized officer of the law, and being married, adds nothing to the solemnity of the association—then it was purely out of regard for the opinion of the world, for the sentiment of the community that she desired this ad-

ditional alliance. If she desired to stand up before a minister or an officer of the law or the church or elsewhere, and be united in the holy bonds of matrimony with Mr. Crittenden; that her offspring to any extent of time may not be tainted with the shame of bastardy; that this woman desired to wipe out this stain upon her reputation, it was out of regard to the opinion of the world, for her theories were different. For she would destroy from the face of the civilized world one of the grandest and holiest institutions, to-wit: the institution of matrimony. She can not come into Court and endeavor to fasten her peculiar, abstract theories in regard to matrimony upon the law of the land, and by virtue of that ask you to acquit her.

Mere compositions, and I say this with all due deference to the memory of the deceased, whom I knew well, who was in his profession a giant, as mere compositions his letters are unexcelled. He was, indeed, a great man in his profession, but the very moment he left that proud profession, of which he was an ornament, and descended to the degraded position of a writer of such erotic compositions, that woman was an empress compared with him. He did not know how to write such literature. She discovered his weakness and played upon it. She knew exactly where his soft spot was, and she exercised the whole of her influence upon him, notwithstanding his great professional ability, influencing him even to the extent of inducing him to abandon his whole family, his relations in life as a citizen, and as a father and as a husband. A man of undoubted character for integrity and honesty; a man of splendid professional ability and exalted social standing. That man was a child in the hands of this designing woman, the splendor of whose genius is evinced in the fact that she brought such a man down from the highest, loftiest position, down, down to an all but ignominious grave. And yet you are asked to acquit her on account of those letters written by Mr. Crittenden to her. These sophomorical productions, precisely such compositions as a boy of eighteen years of age would write; because the character of man, with all his ability, the character of his teachings, his education,

did not fit him to indulge in a correspondence so contrary to all those principles of taste, propriety and good sense, which his breeding and scholastic training and professional qualifications led him to appreciate and respect. Why, this woman—why, she would seduce a regiment of Crittendens. Her power was the power of a female Hercules; hers was the power of all women in correspondence, transcending all power of all the men of the world. It is the women who write letters! It is the women who can wield a supreme influence by their correspondence. They see points of character in their correspondence with men and play upon them with irresistible art. Men are but children in conducting such a correspondence. Give an intelligent woman pen and paper, and she will bring down a Caesar from his imperial throne. How well this woman knew her art and knew Mr. Crittenden. She knew he was a man of unquestioned ability; she knew he was a man of the very highest social standing. She knew he was a man in the possession of an immense income; she knew and realized that an alliance with a man of such a character would place her in the high position to which she aspired. Then she had money; she had gained sufficient money to enable her to live above all want, or prospect of want. She could even live in luxury and splendor, but she wanted a legal alliance with this man; she wished to effect a union between herself and Mr. Crittenden, so that she would be recognized as respectable in society, to-wit: a marriage. And when she had obtained this she would have played her part in a high station of society, in a manner in which she would prove herself to be observed of all observers. But she could not do that in her relations with him. She had him under a sacrament of infamy—the baptism and communion of corruption. It was beginning to tell upon her. She found herself in a position which she thought she did not exactly deserve.

Make me your wife in the face of surrounding circumstances, desert your own family, leave your own wife, she is an adulteress; let your family protect themselves; give yourself to me by the sacrament of marriage, and we will both ascend together and sustain ourselves in our united position

in life for the balance of our days. Failing in that—finding there was a returning sense of virtue in this man—finding that this man was realizing that he was advancing in life, and had children growing up around him; grandchildren getting on his knee and calling him grandfather; finding the time had passed, if it had ever a right to exist, when he could indulge in peccadilloes of this kind, he proposed to return to the path of virtue. And she, discovering all this, discovering that all her hopes and expectations of a union with this man, according to the laws of society, were at an end—realizing the strength of his purpose to reunite these relations which never should have ceased to exist in a perfect form—and inspired by that feeling and that spirit which would actuate a woman of her ability and character, and temper, she resolves to do this deed, and prepare herself for its commission. When she sees the returning dignity of the moral consciousness of this man, resisting all her influence to control and direct him, she resolves, as she had before indicated she would do, to put an end to all her “suspense” by taking the life of this man! And that is the reason, gentlemen, why she is now before you to-day on trial for the crime of murder. It will not do to tell us that a woman who upon one day enters the establishment of Mr. Volberg and makes threats against Mr. Crittenden, herself, or his wife, if a certain house that was being furnished is again occupied by Mr. Crittenden’s family—it will not do for this lady to say that she only uttered these words in fun. Such kind of fun may be interpreted by the result, by the effect of the resolution then indicated—particularly when the effect is of such serious consequences as the deed we are now considering. It will not do for this lady to declare, either now or at the time of the purchase, that she procured this pistol, this instrument of death, in order to shoot boys. Boys as a general rule are not shot. It is not necessary, nor is it customary, in this or any other civilized community, to shoot boys. It is not necessary for women living in San Francisco to employ pistols for the purpose of shooting boys. Because we have a very large and a very useful and energetic and vigilant police. If this house in which she was then

located, was situated opposite the California Theatre, on Bush street—a spot as much frequented perhaps as any street in San Francisco—a mere intimation to a policeman of any disturbance there, would have been sufficient to secure the removal of any nuisance in that neighborhood if any such ever existed. Therefore this story about getting a pistol with which to shoot boys, will not do. It is not within the range of probabilities; but she says it was so. But, even accept this as true to a certain extent—and it amounts to nothing. We have the testimony in regard to the conversation with Mr. Boch, two or three, or four days before the shooting. Now, in the meantime she had made a visit to Oakland and requested the opinion of Mr. Nourse as to the best spot to stand at which to see people coming from the wharf and from the Eastern train on to the boat.

It won't do for her to engage a cabman to carry her down to the boat; it won't do for her to go on board that boat on this evening; it won't do for her to wait until Mr. and Mrs. Crittenden have met; it won't do for her to walk up to him veiled and concealed—that is, her face concealed, and wearing a peculiar dress that has been described here by a certain witness; it won't do for her to walk up to Mr. Crittenden and shoot him dead, and then remain for some inconsiderable time standing in the very spot where she stood when she fired the pistol; it won't do for her to go to the door leading into the cabin and remove that veil; it won't do for her to remain in that cabin undetected for the period of five or six minutes; it won't do for her, when the son of Mr. Crittenden says, "There is the woman that shot or killed my father," for her to stand up and acknowledge the fact, and give reasons for it; it won't do, gentlemen, for her to act in that way, and then come into a Court that seeks to make her responsible for the crime alleged, if any such was ever committed, and declare to you that during all the time she was unconscious. Because, I assert it and affirm it, as a proposition undeniable, that you might take the most thoughtful and prudent man in the world who contemplated the perpetration of such a crime, and all the means, and appliances, and machinery to carry it

out, could not be more perfectly arranged, more perfectly adapted, managed with more discretion and judgment than characterizes the deed of the defendant during this time to which I have alluded. How do those who seek to interpose this plea of unconsciousness and insanity, get over this important fact—that when the crime was committed, and when she was accused of it in this cabin, she declared herself author of the act, and turned around and gave a reason for it? That is entirely inconsistent with the theory of madness, unless the learned doctors be the entire authority on the subject, and general human experience and observation go for naught.

But, says Mr. Cook, she might have killed him privately and secretly; she might have poisoned Crittenden. Could she not have done it under circumstances, and at the times when it would have been impossible to detect the author of the crime? And when it is altogether probable no suspicion would have attached to her? No! No! If she had had in her possession some of the *aqua tofano*, a single drop of which would produce death, and the discovery of which in the human system would defy the inspection and judgment of the best chemist in the world, she could not have escaped detection. Would she have attempted that? No! Would she have employed an assassin to do the work? No! Because there would have been the necessity of confiding her secret to another. Then she would have been in the power of the individual. If she did the deed ever so secretly, the whole community would rise up in indignation to inquire how, and when, and under what circumstances this citizen had been taken from the earth. It was the most dangerous, most terrible act she could possibly have committed; because committed in that way, it would relieve her from the chance of deliverance on the play of insanity. She was not a Lucretia Borgia, because she was not in the possession of power. She could not with impunity order the death of one or more persons by the mere power which the law gave to her. But like a bold, fearless and desperate woman, who had been “ruined” by an eternal separation from him whose possession in marriage was her living and breathing ambition, in the face of

public day, in the face of the whole community, standing up as one entirely conscious, depending upon the publicity of manner in which she committed the deed for its excuse—she goes down and perpetrates this act. And when it is done, when she is arrested, and when she is placed in prison with large means, enabling her to employ counsel of the highest ability, she stands and declares that she did the act, and did it under such circumstances as rendered her entirely unconscious of the commission of the act at that time.

Now, this is the kind of a plea that is interposed here in defense of this woman, and upon which you are asked to acquit her. Why, gentlemen, this community would be struck with a moral earthquake, if you so invade its rights. Your whole system of morality would be undermined. Your principles of law would be like the remarks in a barber's shop—subjects of jest and ridicule. Acquit this woman on such a plea! let this woman go on such an excuse or defense as this, after perpetrating so desperate and cold an act, so deliberate and so malicious an act! Why, gentlemen, there is not an individual at this moment in the State Prison, there is not an individual who ever expiated his crime on the gallows, or ever was arraigned for the commission of a crime at the bar of public justice, who is not innocent in the sight of God and man when compared with the defendant at the bar. This humbug plea of insanity has been prostituted in this case. The law has been trampled under foot. Morality and religion have been "Let down the wind to play at fortune." This woman by reason of her being a woman has sought now to make this a plea for the commission of a crime. But it won't do. Society shakes at this moment to the very centre. The people of this country, by reason of the wide circulation of the reports of the trial of this case, are standing and watching to ascertain whether this State of California is the place where murders of a most infamous character may be committed with perfect impunity.

Mr. Cook: I object to bringing to bear upon the jury the opinion of the public outside. And he ought not to attempt to intimidate the jury by bringing what he terms as public opinion, or intends as public opinion.

Mr. Byrne: Gentlemen, I say it is public opinion that makes the laws; public opinion passing through the persons of the Legislature and put into books.

If you can discover in the testimony of any witness, either on the part of the prosecution or on the part of the defense, one scintilla of evidence that comes within the distance of the equator from the poles, of indicating insanity on the part of the defendant in this case, you can give the benefit of it to the prisoner at the bar. Insanity, so far as it may be pleaded as an excuse for the commission of crime, is altogether different from anything that has been introduced here. We have in this case all the evidences of preparation. You have first of all, the woman. You have the antecedent threats; you have for the implement the very weapon so well calculated to produce the effect intended; you have her going to the boat; you have her, in a measure, concealed; you have the appearance of the man and the wife upon the boat; you have the firing of the pistol—the result of that firing is the death of that man; you have this woman retiring after the firing into the cabin, conducting herself in all situations and under all circumstances as a man would do who had been employed to commit the crime. There is not one scintilla of real evidence in regard to insanity that is to be found in this case. Was there any frenzy? Was the intellect deranged? Was there any wild or extravagant passion? Was there any evidence at all that she was in a condition by which she could have been distinguished from any other human being on board of that boat? Did she show any insanity in her eye? Probably if Dr. Deane had been on board of the boat he might have recognized something in her eye that indicated fury. There she was cool and collected in all her acts and manner from the time she started from the wharf until the deed was done. She employs a hack-man to take her down to the boat; she goes down to the boat; she is carried over upon it to the other side of the bay; she waits until it departs from the Oakland wharf and then she commits the act.

Mr. Cook talks to you about it being a remarkable thing that she did not throw the pistol overboard; that if she had been wise and prudent and “conscious” she would have taken

a few steps to the side and thrown the pistol overboard. No, she stood for a considerable time, as I said before, without changing her position, then she dropped the pistol at her feet where she stood. She staid to watch the effect of the shot and to avoid attention being drawn to her, she remained motionless. Then she turned deliberately, and walked away without attracting attention, thinking she might escape in the crowd, there being a large crowd there at the time. But when the son of the deceased pointed her out to the officer as the individual who shot his father, then it was that she found she was detected—following out, no doubt, the plan she had before contemplated—then it was that she stood up like a bold, fearless, determined woman, acknowledges the fact, and gave her reasons for it; and these facts, and the acknowledgment of it, and the assigning of reasons for it—remove entirely the idea of insanity from this case.

And give to Mr. Crittenden all the demerits that his conduct has earned, regard him as an individual who does not deserve any consideration upon this point of morality, but for God's sake as to a man who has lived among you for twenty odd years, who has occupied a high station in his profession, in society; and in the Legislature, who has aided in framing your constitution; who has left his name ineffaceably graven upon the history of this coast, do not say that his sins have been so great that she who slew him ought not to be held responsible for the act. He did not so far forget himself in his weakness or so far wander from the path of rectitude as to finally and absolutely leave the family and the relations to whom he was bound by the most solemn ties of marriage and consanguinity. Do not forget the good that was in the man as evinced by his public life and even in his private relations, though he greatly erred for a time.

"The evil that men do lives after them:
The good is oft interred with their bones."

Thus let it not be with Mr. Crittenden. Do not let the defense in this case to interpose any errors or imperfections in his life as the principal portion of a shield that is to protect one of the greatest violators of a law that ever entered

a Court of Justice. You cannot do it; you cannot violate your duty; you cannot disregard your oath. His lady, like thousands of others in the world, separated for a greater or less period of time from her husband, the man living in the wild recesses of the mountains, as you may say, remained with her children to protect them, to guard and nurture them, to teach them by her good example the paths of virtue and honor. She devoted her attention and bestowed her love on those who required her attention and love. While her husband was in a distant portion of the country, living away from her, was induced to yield to the fascinations of this wily woman and that yielding, that state of fascination, continued for a considerable period of time. When he found that he was advancing to that age when it was most reprehensible of him to engage in such intercourse; that popular opinion began to fasten itself upon his reputation on account of this alliance; when he realized fully, probably for the first time, that he had been guilty of the greatest wrongs to his family, then he resolved once more to call about him those from whom he had been partially estranged; to summon from a distance those who had been and who continued to be the nearest and the dearest, and to rebuild the family hearthstone, never again to be deserted so long as they should live. When this woman became acquainted with the resolution and purpose of this man, when she saw her great hopes and great ambition vanished, she resolved upon death or the madhouse, and she spoke her resolution to Mr. Volberg: If that house was ever again occupied or made ready for occupancy, either Mr. Crittenden or herself or Mrs. Crittenden should die.

Will you take away from the man the right to repent? Will you not allow the individual who has violated the conventional rules of society, or who has broken his marriage vow—has broken, if you please, the laws of religion and sound morality—the privilege of repentance? If you shall shut the gates of mercy against such a man, certainly you will not undertake to do it by rendering a verdict of acquittal in this case. Will you close up the portals by which a man may return to society, and to a deference to those moral and re-

ligious laws, which are or ought to be entertained by every civilized and enlightened member of society?

This venial offense which constituted the crime of Mr. Crittenden—a crime in the eye of abstract morality—is not one of which he affords an isolated example. Mr. Crittenden is not the only man who has figured in the tide of time as having been guilty of such sins. History is filled with examples of this kind. Men of the greatest ability, remarkable for the vigor of their understanding and the extent of their learning, and their eminence in their professions, have fallen before the smiles of a deceitful and designing woman and have been guilty of a thousand and one silly and sinful acts which the world would have thought them incapable of committing before they were drawn into the meshes of their cunning seducers. Nor need we go to ancient times or to other countries to find examples. Men of the greatest renown in our day have become noted for this, that in an hour of weakness they yielded to the fascinations of some pleasing woman with whom they were thrown into companionship.

You might as well say the assassin of Henry IV, of the Prince of Orange; that Wilkes Booth who shot down Abraham Lincoln, in a public theatre, indulging in a Latin phrase, “Death to all tyrants” and the others I have named, were insane, and with greater reason, too, as to say under your oaths that this woman was insane when she assassinated Mr. Crittenden. And even as compared with the last example which I have quoted, the sanity of this woman is more evident.

Wilkes Booth did not make half the preparation for the assassination of the President that is shown in this case. He did not seek to poison him; he did not work himself into or through the kitchen and into the bedroom of the President at the White House in Washington; but he boldly and determinedly walked into a public theatre, where two thousand persons were seated, and shot down, in a private box of that theatre, the President of the United States. No man living ever thought of suspecting that the assassin of the President was crazy. There was a glory, a splendor, a romance attached to the act, and he was an actor who believed he would

realize by the deed, a lasting fame. We may say of both—they were inspired alike by the same feeling that led the “aspiring youth who fired the Ephesian dome, whose memory outlives the name of the pious fool who reared it.” If Wilkes Booth had been arrested, he might have pleaded insanity. It was the boldness of the act, the effrontery, the romance that attracted him to its commission. I wish I could recall at this moment Mr. Webster’s remarks which he made in the prosecution of the Crowningshields for murder, in which he referred to that very fact; declared that there is a romance, a glory about the killing of a man, which takes away from the minds of a certain class in the community, the sense of wrong and atrocity which properly belongs to the consideration of the deed.

I think it would be improper to institute any comparison on the question of veracity between the defendant at the bar and Mrs. Crittenden. The contrast between the widow who had no motive to tell anything but the exact truth and the defendant who had every faculty brought into active play as every motive was aroused for their exercise, is remarkable and startling in the extreme. Here are the two characters exhibited to you by their appearance upon this stand. It would be an insult in such a case to society, an outrage on all the decencies of life, to indulge for one moment in the serious work of comparing the dignity and the grace and the truthfulness of that widowed woman, with this defendant as a witness in this case; to compare that glorious matron with the prisoner at the bar. Am I right in this picture? Have I truthfully sketched or suggested, rather, the difference between these two persons? When you retire to your jury room I ask you to consider whether this photograph which has been drawn by one who does not profess to be an artist in such delineations, is not completely suggestive of the contrast of these two characters. It was scarcely to be endured by a man who had ever had a mother or a wife or who had the slightest pretensions to common decency or by a man who had any respect for the laws sanctioned by society, morality and religion, to hear that lady tell you that the prisoner at the bar

had said to her that she was an adulteress. Why, the very blood of the human heart will stop at the announcement of such outrageous expressions. She (Mrs. Fair) when spoken to and reproved by Mrs. Crittenden—the true and lawful wife of Mr. Crittenden—who had children, some of them grown and grandchildren rising in years, the children and grandchildren of her now deceased husband—this lady with all the cool and calculating complacency of a woman of the world says, “Let your husband get a divorce and marry me, you are an adulteress.”

Why, great God, is it possible that in a Court of Justice twelve men must quietly listen to such outrageous and infamous revelations? Where are your mothers and wives? What sort of morality is it that is sought to be fastened upon the civilized world by the utterance of such sentiments in a court of justice? What becomes of the daughters and the sons of this generation? What becomes of the whole fabric of society if, in the progress of a case of this kind, when such a broken-hearted woman is on the stand, telling the story of her wrongs—she who has been robbed of her husband—sitting, like Niobe, all in tears—testifying, as she is called upon to do, in regard to all the transactions which are pertinent to this case and within her knowledge; when she is saluted, in the midst of her evidence, by the prisoner at the bar, with the cry—“You are a liar”! What shall become of this society if principles like these are to be engrafted upon it?—principles that bring out this theory which is illustrated when Mrs. Fair says to that noble wife, “You are an adulteress. I am the wife of your husband in the sight of God. Let him be divorced, and let him marry me. You are an adulteress.” There never was a grosser insult offered to the morality and intelligence of the world, than is embodied in that declaration—never in all the history of the world. If there had been any child of Mrs. Crittenden present when such an announcement was first made, and he should have shot this woman upon the stand for its utterance, I question whether there is any jury in the world that could ever have been induced to have brought in a verdict of guilty of murder for such an act. Because,

in such a case, it is true that those passions that it has been claimed operated to make this woman unconscious at the time she committed this assassination, might naturally be supposed to have operated so as to have resulted in a temporary aberration of mind on the part of the son of this widowed woman. Yet, in the face of such conduct, in full view of such obligations as I have indicated, I believe are laid upon you by the community, it is proposed, that you should indorse these sentiments, and should say, in addition, that because Mr. Crittenden has been guilty of a venial offense on his part, this woman must go free. You, gentlemen, are called upon literally to indorse those free-love sentiments which have been shed abroad from this court room. What influence these sentiments must exert on the community, you can judge as well as I. You saw the large crowd in attendance during the occasion to which I have referred, and must have noticed how they drank in the sentiments of that woman. You must have observed the manifestations of deep feeling that was experienced on the part of every one present when that lady declared that she was advised by the defendant to get a divorce, and herself stigmatized by the prisoner at the bar as an adulteress. There never was such a perversion of language; never such an insult offered to a court and jury in the world.

This is one of the practical results flowing from this modern system of free-love, by which religion and law, virtue and purity, and all the moral qualities which make the true man upon the earth, are sought to be sacrificed at the polluted shrine of those who would convert society into one mass of corruption, sink it, and upon the ruins of that society—the sacrifice of all morality, law, and religion—would erect a monument to the honor of one for whom Rome in her elder days dedicated a temple; when all the basest of passions were deified; when the disrobed goddess of lust was the object of worship, and society was turned into a grand carnival of sensuality. This is just what would be done by carrying out the principles advocated by these free-love theorists. How proper, how dignified, how just the response of Mrs. Crittenden, when this assault was made upon her by the defendant:

“Mr. Crittenden can never get a divorce from me, and I will never seek to get a divorce from him.” The practical effect of these ideas would be to destroy all present refinements, overthrow all order, all proprieties, all decencies, and inaugurate scenes of anarchy and passion which would exceed in horror anything that the mind of man would imagine.

Gentlemen of the jury, you are called upon by the defense here to give your sanction, in a formal and emphatic manner to such doctrines.

The whole tenor and conclusion of the argument of the defense is that they want you to hug the offender, and forget the offense, and all because she is a woman, because she is one of that sex that calls upon us for the exercise of all our gallantry and our chivalry.

Gentlemen, the only means by which the tranquility of society can be preserved, is by the speedy and certain administration of justice upon those who have been guilty of violations of the public law.

If you decide here that the defendant at the bar should be released from responsibility for her act, in view of this abortive attempt made to establish the existence of insanity in her case, why, you will let loose upon the community a class of individuals—both male and female—who will not hesitate to perpetrate the most violent crimes; confident that if they can only obtain the services of some distinguished lawyer and orator like Mr. Cook or like Mr. Quint, to come into court and shout “insanity”—merely the word insanity—that they will be shielded from the consequences of their deeds. That will be the particular working of this sort of thing. Gentlemen you can not do this.

Criminals, gentlemen, must not be pelted with the scent of roses of poetic justice. This woman is brought into Court charged with the commission of a grievous offense, the highest known to our laws. Because the counsel for the prosecution in the exercise of their judgment call things by their proper names, denounce the violators of the law, comment upon their conduct and their antecedents; because my associate does that which the law expects him to do and which the law sanctions, he is to be spoken of in the terms indulged

in by Mr. Cook. That will not do. Jury trials, if such were the case, would be left in the condition to which I referred yesterday. They would be left in that condition in which Dr. Trask with his theories would place them. We would do away with the whole jury system and institute instead a system of councils over which three or six or nine doctors should preside!

No! Where an individual comes into Court and seeks to shield herself from that justice which we on the part of the prosecution deem she has justly merited; when she puts her reputation at stake; her standing and alleged misfortunes in the issue, we have a right and we would be false to our trust if we did not exercise that right to inquire who and what she is, where she came from and what has been her history from her cradle down to the time she takes her position at the bar where she is to be tried. How can you tell whether the defendant at the bar is a married or unmarried woman unless the question is investigated? How can you tell whether she has one or a dozen husbands? How are you to draw a distinction between the susceptible heart of a young, unsophisticated girl, one who having had no experience in this world or one who while innocent and unsuspecting was betrayed by a cunning seducer and led from the paths of virtue, through what could scarcely be called a fault of her own—lost, lost to the world by the cruel arts of the accomplished seducer? How is it possible for you to judge whether a given prisoner may be such a character or one whose experience in the matrimonial world has probably not had a parallel in the State of California?

There is in the character of every woman, every good woman, that which creates a perfect freedom for investigation into her history from her cradle up. No woman upon the earth who can be truly called a good woman, can have any apprehensions as to any security of her life and character for chastity. Chastity is a quality that defies all investigation. And as Milton has very properly said in his *Comus*:

"So dear to Heaven, the saintly chastity,
That when once 'tis found sincerely so,
Legions of angels surround her, and drive away all bad things."

A woman that has been true to herself cannot be false to anybody. The woman who has paraded the path of virtue, sanctioned by religion or morality, or both—whether she be high or low, educated or ignorant—can snap her finger at the world and all who scrutinize her history from the cradle to the hour in which she is speaking. It is only those who are afraid of the discovery of something wrong in their history that are alarmed at a suggested investigation.

And when you have such an individual as the subject of judicial examination, you can only then prove general reputation and not special acts. How, in the name of God, is the reputation of any man to be known in the community unless it is general? And it is for that reason that the law does not permit acts of individuals to be the subject of judicial investigation. You speak of a man's general reputation. When this defendant's reputation was investigated, the questions were as to her general reputation. What do people say about her? What did her neighbors say about her? What was her reputation—here, there and elsewhere? The statements that persons generally made about her when her name was introduced into conversation? This makes up general reputation. That is the kind of testimony that has been given here. Some said that they knew her reputation to be bad in connection with her alleged relations with Mr. Crittenden. Others declared that her reputation was bad outside of those relations with Mr. Crittenden. It is very proper and just and right that the private acts of persons should not be the subjects of judicial investigation, because private acts might be alleged and sworn to as against individuals, by persons who from envy or hatred might be willing to come into Court and testify falsely about specific transactions. It is the general reputation alone that can be brought into question, the manner in which everybody in the community speaks of A., B. or C. That reputation was sought to be established in this case. Why? Because if Mr. Crittenden had pursued a line of conduct against this defendant, she being a maiden unsophisticated and untaught, who never yet indulged in that unborn grace of life called love; if she was a simple girl who

was seduced by the machinations of a man having all the influence which has been attributed to Mr. Crittenden; if she had been withdrawn from the path of innocence and virtue by him, and made a victim to his lust—she would have stood in this court room like a princess, adorned with all the qualities that belong to the female character, with the power and strength that only belong to a virtuous woman. But when we find, upon investigation, that she it is who has been following this man, that this man has been entrapped by her, that she discovered his soft part, and forced him to love her, if you please; when you find that this woman has been forcing this sentiment and association of love in the face of one who has been married to this man for twenty-five years, and who has children and grandchildren, and he the parent and grandfather; that she has been pursuing a line of conduct that was abhorrent to virtue and propriety; and that she was urging this man to violate the highest laws of the community, and separate himself from his wife and family; then the question very naturally arises.

Mr. Cook drew your attention to the alleged fact, gentlemen, that the blood-hounds of the law were on the track of this woman.

Mr. Cook. Scent-hounds.

Mr. Byrne. Well, scent-hounds. I do not know, gentlemen, of any one who could properly come under that designation who has been engaged in this case, except I judge from the pictures which I saw in the paper the other day. That is the only place where I have seen any evidence that blood-hounds have been employed in this case, and those are only counterfeit presentments. Therefore, I say, there have been no blood-hounds or scent-hounds of the law on the track of this woman. There is no contingent fund out of which means can be realized with which we could be enabled to do anything of this kind in this case. If there were forty or fifty or sixty thousand dollars in the public treasury dedicated to this sort of business, probably we should have a great many candidates to discharge some of those duties which properly belong to

the preparation of the trial of such a case as this. But there is no such fund known to the law of this country.

The fact is, gentlemen—and I don't wish to reflect upon the courage of Mr. Crittenden—this woman had scared him to death. I think that any man who gets enamored of a woman, or any man who becomes enamored of a woman, naturally degenerates into a coward. I think he becomes a coward. I think these letters indicate all that. "Dare to do it!" Then the words: "Dare to go to this woman!" "Let that woman ever return!" "Let you ever be again connected with that woman!" or words of similar import. She had forgotten to use the gentle phrase which is more commonly employed in polite and refined society to-day—the term "lady" or "your wife"—but uses instead the Saxon word "woman." "You ever connect yourself with the woman again and you are gone!" "You are sacrificed!" You follow her or ever connect yourself with her again, and verily you must abandon all remorse; you must—indeed you might say she said to him, in substance if not in words—

"Never pray more; abandon all remorse;
On horror's head horrors accumulate;
Do deeds to make Heaven weep, all Earth amaz'd;
For nothing canst thou to damnation add
Greater than that."

And it turned out precisely as she stated. You meet that woman! Let me ever behold you kiss her! Let me see you embrace her! You ever unionize yourself with her, and you will realize in its fullest completeness a hell upon earth.

Why, is there anything in this world so dreadfully sickening as this expedition of this woman down to that boat, according to her own explanations, to see whether a man who had been twenty-five or thirty years married to the woman he was about to meet—the mother of his numerous children—to see whether he would kiss his wife? Why, gentlemen, if we were to implant upon our statutes the blue laws of two hundred and fifty years ago, according to which, I think a man was fined or made to suffer a certain penalty if he kissed his wife on Sunday, perhaps we could not bring about

a more preposterous result than is illustrated in this transaction. This woman's feelings for this man were carried to an extent that she desecrated the very word "Kissing."

This woman had poisoned this man's intellect so that he was even afraid to kiss his own wife on meeting her after a separation of seven or eight months, more or less. He is seated on one of the benches on the boat, his daughter on one side and his little boy on the other and his wife holding him by the arm, and this woman went down there, according to her own account, for the purpose of seeing whether this man would kiss his own wife. Gentlemen, these things are so absolutely absurd, and at the same time so monstrous that I take no pleasure in referring to them because they are an insult to our manhood. Every man who ever had a mother or a father or a wife, can never have heard the statements uttered without feeling the most supreme contempt for the individuals from whose mouth they came.

The mother and wife was trying to pursue the very conduct which the law exacts, both the moral and divine law, because she was proving herself a mother and a wife. Because of that this woman takes the law into her own hands, no doubt relying upon the influence of her great wealth, knowing that wealth may be able to secure her immunity from the penalty for the crime she is about to commit—takes the law into her own hands and shoots down, to make it more atrocious, the man in the presence of his wife and in the presence of their children.

How it is and why it is that a woman who was in this semi-conscious state, carrying with it among other practical results a total unconsciousness when she committed an act and the peculiarity of forgetting what she did commit, how is it that so shortly after the commission of this act of bloodshed, she makes the acknowledgment and gives the reason and in the jail the next day or the day following, she desires to be dressed and prepared for the occasion of attending the funeral before they placed him under the cold earth? How did she know that Mr. Crittenden was killed? Where is the evidence, so far as we can gather from the testimony in this trial, where

was the evidence that she was ever informed of the death of Mr. Crittenden? Where is the evidence that it was ever communicated to her—so far as this case is concerned—that she ever knew that he was shot? Who, between the time of the firing of the pistol and her acknowledgment of the deed and the assigning of reasons for it, informs her that she had shot Mr. Crittenden or that Mr. Crittenden was known at all on board that boat outside the members of his own family? If they set up this theory that her source of information was the statement made by Parker Crittenden to her at the time of her arrest by Captain Kentzel, then the theory of her giving a reason for it, acknowledging the deed and giving a reason—then the theory that is set up here of semi-consciousness and forgetfulness of the whole transaction ever afterwards, must entirely fall to the ground, because the testimony you have heard and the theory advanced in regard to unconsciousness, cannot stand together. One or the other must fall to the ground. If she was unconscious and this unconsciousness carried itself beyond the act itself; if the total obliviousness of the act is a part and portion of the peculiarity of the human mind, when a person commits unconsciously an act, how is it that this lady admitted the whole transaction? And how is it that her reasoning power took full possession of her mind and she turned to and gave her reasons for doing it? I say this is inconsistent, entirely inconsistent with this theory that has been set up and when you add to that circumstance, that within two or three days afterwards in the prison she was desirous of having her clothes arranged or put on for the purpose of visiting the deceased, to see him once and forever before they placed him in the cold ground, are all at variance with those doctrines of insanity and at variance with our common experience of men.

This doctrine of insanity, gentlemen, is a full and complete defense for any crime that may be committed where the party charged with the offense is really insane. Human law, obeying its philosophy, yielding to the humanity that belongs to all civilized countries, affords its protection to one who commits an act under circumstances in which the law declares it

can not be a criminal act, which it would be were the party entirely conscious of the deed—where insanity exists. But if the prisoner was insane, we would have some indications of the insanity. A person may be affected with dyspepsia, may be troubled with some of those ailments, which the counsel have referred to, that troubled, if you please, the defendant at the bar. A person may be affected, then, with a thousand diseases—neuralgia, for example, from which I am suffering very much myself—any pain, an affection of the bowels, any of those ailments that flesh is heir to; anybody or everybody, if you please, the most prudent of men and the most thoughtful of men, makes them irritated, irritable, and forces them to say things and do things, which under other circumstances they would neither say nor do. If by your verdict you say that every individual who may be ailing, like the defendant, as claimed for her by the counsel for the defendant, is not accountable for their acts, then you have, by an arithmetical calculation, one quarter of the women of the City of San Francisco, who may at any moment when laboring under any of these ailments claimed for the defendant here, shoot down or cut down anybody and everybody, when and where and under what circumstances they please. If they should be arrested for the perpetration of any of those crimes they can come into court, plead the same plea that has been here interposed, your example would be followed, and they be relieved from all responsibility. I merely mention this to show you the danger there would be in assuming that this insanity has been proven to the extent that would justify or excuse the commission of a crime. It would be a most terrible state of society if the theory of Dr. Trask were the correct theory. If every girl and every woman, to the extent of one quarter of your female population, were at any moment from any cause liable to get into a condition where they could shoot down or cut down any one to whom they might entertain feelings of regard or feelings of hatred; then, I say, that the objects of your law, and the purposes of your society are entirely useless. There would be no protection for man, woman or child in the community. I say that such a rule as that is so dangerous, so destructive,

that it becomes, as it were, the rule of ruin rather than a rule for the preservation of society. If this insanity was the insanity that belongs to the law, the insanity that has been recognized by the schoolmen belonging to the medical profession; if it was the insanity that belongs to the teachings of the law, as given and enunciated by the judges upon the bench, and by writers upon the subject of insanity, why then there would be very little to say here upon the part of the prosecution. We have to bow to the higher authority, and although we might denounce it privately in our own judgment, still we would have to confess that it was a part and portion of the recognized law of the land, however much we might deplore it.

All the decisions in every State of the Union, with the exception of one or two—all the decisions of the English courts, where the great learning on this subject has been collected—those rules are that the insanity must be established upon the part of the person that puts in the plea, beyond “all reasonable doubt,” to use the language of the law writers. It is not for the prosecution to disprove insanity. It is not for the prosecution to have anything to say on the subject. Where the individual hands his plea of insanity to the Court, or where it is sought to be sustained by testimony, they must do it beyond the possibility of a doubt.

There must be no doubt about it. The question of reasonable doubt upon this question of insanity, which does prevail in cases of this nature, is not recognized by the law. If, then, in the investigation of this case, you come to the conclusion that none of the peculiarities that distinguish a sane from an insane person, either in the preparation for this crime or in its execution, have been shown here, then, gentlemen, there can be but one judgment at your hands. An insane person is one who is bereft of his senses so as to render it next to an impossibility, if you please, for him to distinguish between an act that is good and one that is bad. In such a case, why, of course, this humane provision of the law should receive all the force that it is entitled to. In investigating a proposition of that kind, you will be required, as your own good sense will tell you, to ask yourself: What has been

proven in this case to indicate that this defendant ever was insane?

The preparation for this crime shows great method. The procuring of a pistol, by itself, is one of the strongest indications of the perfect self-possession of the defendant. The having a pistol in her possession upon the day of the killing, going over on the boat, remaining upon it until the opportunity to kill did present itself fairly, the doing of the killing, the removal into the cabin, the scene that took place in the cabin, the turning up of her veil, having up to that time the face concealed—are all the evidences of method, and of preparation, such method and such preparation as do not belong to a person who is unconscious of what she is doing. It will not do; it can not be that individuals who, in every step they have taken, in every word that they have used with regard to threats, and arming themselves to make themselves perfect masters of their situation—it will not do to come into Court, and on behalf of them to say that these threats which have been uttered, and these preparations which have been made, and which show a method belonging to a very clear and a very unquestioned intelligence, were the indications that can in any degree be regarded as the evidences of weakness of mind. No human being on earth could have more thoroughly and completely consummated what he had threatened to do, than the defendant at the bar. She was on this boat, and nobody noticed anything in her conduct; nobody noticed anything in her appearance, in her eyes, or otherwise, that would show she was affected with any of those bereavements of the intellect. On the other hand, she stood there—went there and remained there—until Mrs. Crittenden, and her family, and her husband, came on board from the cars; and when the time did come, as the boat was leaving the wharf, without showing her face, without uttering a word, without saying or doing anything beyond the firing of the pistol, she fired it. She stood there for a few minutes, or a short period of time, removed her veil, went into the cabin, hoping to remain undetected until the boat arrived, having her carriage ready to carry her away. When detected and charged with

the offense, she acknowledges it, and gives the reasons you have so often heard spoken of here as to the cause of it. Now, I say, that if in any of those features of this testimony you can perceive any of those aberrations of mind that are claimed for this woman, then it must be by some means, or in some way, that the prosecution in this case do not understand. Some people sometimes, when they find themselves within the grasp of the law, interpose this plea of insanity, with a view to a full and complete defense. It is a plea, gentlemen, that, when pleaded properly, is as great a barrier and a protection to the individual accused as any plea known to the law; but it has been prostituted. It is interposed in every case where the individual is capable of employing lawyers of such distinction as those who have figured in this defense. It is employed, as a rule, in every case where women are the subject-matter of examination. It is employed in those cases where persons have gotten themselves into difficulty under circumstances something like those of the defendant, and who manifest by their appearance, by their intelligence, ability, peculiarities that create the distinction or the difference between an ignorant and enlightened person, knowing that the human heart at best is weak, and that by a parade of letters and the interchange of sentiments, and the doctrines advanced by doctors, which, in nine cases out of ten, are not understood by anybody, they can do it with a great success; for it is, as I have said, the most dangerous of all human pleas. It is dangerous to society. It makes a mockery of the administration of the law.

But there is another idea, gentlemen, that I desire to draw your attention to, and I am sorry to be trespassing upon your patience. This woman claims to have been the wife of the deceased, as he, the deceased, in her opinion, claimed to be her husband, sanctioned by a law much higher than that which we find upon this earth. Take this example. A woman, the lawful wedded wife of another, if she, in her hours of weakness, is caught in *flagrante delictu*, as the lawyers call it, with somebody else, the husband can shoot dead the party. Supposing it to be the case that the defendant at the bar had

been found in *flagrante delictu* by Mr. Crittenden, and he had shot the individual found with her, where would his plea of being a husband be? What would such a plea upon his behalf, upon a trial for murder, effect? What kind of an operation or effect would such a plea in his case have in the case of killing the individual whom he might have found with Mrs. Fair, upon the ground assumed here that she was his wife, and he her husband? Why, the advancement of such a proposition would simply result in the plea being laughed out of court. Mr. Crittenden would have no more right to harm a hair of a human being, no matter what his conduct might have been toward Mrs. Fair, than he would of the most perfect stranger in the world. I only cite that for the purpose of showing you how entirely preposterous and absurd is this argument on the part of counsel—this statement upon the part of the defendant that by the higher law she was the wife of Crittenden, and he her husband. Therefore, whatever his abstract views may be with reference to marital rights, they will not, and can not, under the present existing laws, in all Christian countries, amount to anything in a court of justice. She may have conceived that the higher law, that we know nothing about as mere earthly beings, should govern her; but when you have earthly courts of justice to pass upon those questions they do not penetrate, because they cannot, the great secret doctrines of infinity, but are content to the extent of their power to interpret the laws, to administer them as we understand them here upon earth.

Well, gentlemen, I have, in a measure, endeavored to answer some of the arguments that were advanced by the two counsel that represent the defense, feeling convinced that the able argument of Mr. Campbell has really covered all this case excepting in regard to some few things that were said after he took his seat. It was a difficult thing at all times for me or for anybody to attempt to answer or reply to the thousand and one various points that were raised by these gentlemen and brought into the case without their being legitimately there. I have endeavored to show you the total inconsistency of this plea of insanity; that the facts surrounding this case

must make us revolt at the idea of any insanity ever having taken possession of the brain of the defendant at the bar. That to adopt a plea like this, so entirely abortive, would be opening the door to the perpetration of the most heinous crimes known to the law. And notwithstanding the pathetic appeals of the apostrophe to mercy which both the counsel made to you and whilst man acts "most like God when mercy seasons justice," you should bear in mind at all times and under all circumstances, whether as jurymen or citizens, that mercy but murders in pardoning him that kills without sufficient cause; that the authority of the law, both olden and modern—the argument of civilization—all go to fasten that proposition upon the mind of every well-thinking man. As the counsel says:

"The quality of mercy is not strained;
It droppeth like the gentle rain from heaven
Upon the place beneath; it is twice blessed;
It blesses him that gives, and him that takes.
'Tis mightiest in the mightiest; it becomes
The thron'd monarch better than his crown."

But, bear in mind, in the face of that beautiful sentence, that mercy but murders in pardoning him that kills, and man acts "most like God," it is true, "when mercy seasons justice;" but the other consideration involved is paramount even to that feeling which has been so elegantly spoken of by the poet.

We say to you, as citizens, as jurymen, as members of society, if this individual has been proven to you to have killed Mr. Crittenden, unless you are satisfied, beyond all doubt, that she was unaccountable, the prosecution here is entitled to a verdict at your hands. The demands and exactions of society require it; the tranquility of the community demands it; the reputation which our city bears in the estimation of the civilized world authorizes it. There is no interest, social, political, or otherwise, that can possibly be thought of, or contemplated, but requires that, in a case of this character, justice should be done. The great demands of society, involving its ten thousand interests, require that the administration of

justice should be pure and unadulterated; that the stream of justice should flow as limpid, as pure as nature intended it. The doing of any other act, the diversion of that stream of human justice from its proper and legitimate channel, would bring on the head of us all an inundation that would sweep us into chaos and society would not be safe—no male or female in your midst could hold up his or her head and say with one degree of confidence that their life was worth a pin's fee.

This woman stands here arraigned for the perpetration of a great crime. You are her peers. In your hands is her destiny. Upon the one hand you have her, who of her free will committed a great crime by removing one of your fellow men from his place upon the earth. On the other hand you have the entire society in which you live. You have a duty to perform to it; a duty which you owe the law by virtue of your oath which you owe your God. Will you, can you, stand there even now and through the balance of your life say that you have approached the consideration of this case with that degree of care, that prudence of thought, seeking to hold the balance of justice equally—can you say that there has been anything said here upon the part of the defense that would justify you in declaring by your voice, by your vote, by your verdict, under your oath and in the face of this evidence, that defendant at the bar is entitled to a full acquittal of this crime by reason of her having been insane?

She stands here arraigned that, with presumption impious and accursed, she has usurped God's high prerogative; that she set afloat blood that should have flowed in calm and natural currents; that with a diseased and moody spirit she took away that life that should have lived along to the extent that God intended. Vile in disposition, bloody in thought, she struck down one that was intended for a better and a greater future. In doing this, the least we can say, with all the feelings of humanity that necessarily prompt us, is that she is, in view of this transaction—in view of this murder—she stands here in the eye of the law in no other capacity than as a cold and deliberate and willful murderess. Any other

theory would be insulting to the intelligence of the age. Any other theory would be violating the law of the land; and I do not think that you—I do not think that any sensible man will permit those feelings of the heart to get such a complete mastery over the mind and judgment, that although her sex is one that is well calculated to provoke the exercise of the feelings, it, and it alone, will ever cause you to fail in the performance of that duty which you are required to do by reason of the oath which you have taken.

THE CHARGE TO THE JURY.

JUDGE DWINELLE (who stood up while delivering his charge, and the jury stood also):

Gentlemen of the jury: It is the duty of the Court to state the law applicable to the case on trial, and to the facts and circumstances developed by the evidence; to decide what shall not be admitted as legal and competent evidence, and generally, to regulate the conduct of the trial. It is the duty of the jury to take such evidence into consideration, to weigh it carefully; to apply their best judgment to the discovery of the truth, and by their verdict to declare it, without regard to the sex or social position of the party accused. The law in its policy makes no distinction between the murderess and the murderer—they are alike amenable, and we should not contravene its design by such distinction, whereby the guilty may escape the full punishment provided by law; and while courts and jurors perform their respective duties, the law will be properly administered, and all within human power will be done for the detection and punishment of the guilty, and for the security and protection of the innocent. In the language of an eminent jurist, "We are not here to administer sympathy, but to execute justice; to carry into effect the laws of the land; to enforce its solemn mandates, and not to nullify or relax its positive commands by misplaced sympathy or morbid clemency." This duty we must discharge at whatever hazard, whether painful or agreeable. Neither manhood nor honor, the restraints of conscience, nor the solemn mandates of the law allow us to decline its performance or to hesitate in its execution. It is enough for us to know that we must administer the law as it is and have no right to usurp the legislative power and apply to a past transaction laws of our own creation.

To convict any person of a crime under our laws, it should appear from the evidence that there was a union or joint operation of act, or intention, or negligence. "Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused." And our statutes provide that "a person shall be considered of sound mind,

who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person knew the distinction between good and evil."

Under the indictment, if in your opinion from the evidence, and the law as it will be given to you by the Court, you are justified in so doing, you can find the prisoner guilty of either murder in the first degree, murder in the second degree, or guilty of manslaughter.

(After instructing as to circumstantial evidence as to confession):

All of the presumptions of law, independent of evidence, are in favor of innocence, and every person is presumed to be innocent of crime, until he is proven to be guilty; but if it be proven that the accused did the killing, as charged in the indictment, the burden of proving facts and circumstances of mitigation, or that justify or excuse the homicide, or that show that the party who committed the homicide was not legally responsible for the killing, devolves upon her, unless the proof on the part of the prosecution sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused for committing the homicide, or was not legally responsible for the killing.

On behalf of the prisoner, it is insisted she should be acquitted, for the reasons as alleged, that she is not legally, morally, or otherwise responsible for the killing of the deceased, Alexander P. Crittenden, if she did kill him; that she was insane when the mortal injury was inflicted; that she was unconscious at the time of the alleged shooting; that she was then unconscious of the act, and in such a state of mind produced by hysterical mania, superinduced by organic disease, and incapable of harboring malice; that at the moment of discharging the fatal shot she was impelled so to do by an uncontrollable impulse, and was then unconscious of doing wrong—not legally responsible for the act, and ~~and not~~ guilty of murder in the first or second degree, or of manslaughter; therefore, it is necessary that the law in reference to insanity and diseases of the mind applicable to homicide, should be adverted to. The moral, as well as the intellectual, faculties may be so distorted by disease, or other cause, as to deprive the mind of its directing or controlling powers. Insanity has been defined as "unsoundness of mind;" an insane man as a "man of unsound mind;" yet, a person of unsound mind may commit a crime and be legally held responsible for its commission, unless his peculiar unsoundness of mind or monomania were involved, for the reason that his mind may be unsound on some subjects, and sound upon others. As a general rule, an insane person is incapable of committing crime—but there are exceptions to the rule. A person sometimes insane, who has lucid intervals, or is so far sane as to distinguish good from evil, right from wrong, may commit crime and be legally held responsible. In reference to crimes in this State, "to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know

the nature or quality of the act, or if he did know it, that he did not know that he was doing what was wrong." Our statute, already referred to, which provides, "that a person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, * * * if such person knew the distinction between good and evil," if not a definition—the word "insanity" being understood in its larger sense, as including idiocy, lunacy, and all other kindred forms of mental infirmity—it is the key to the explanation of insanity, as applicable to the criminal jurisprudence of this State, and effectually provides that no person is, or shall be, held responsible for any offense against the law, if he was naturally or otherwise an idiot, a lunatic, or affected with morbid, temporary or permanent insanity, mania, monomania, dementia, or any mental disease or ailment, which deprived him of the power of distinguishing between good and evil, right from wrong, at the time he committed the offense, whether his affliction of mind was natural, or the result of artificial or other causes. Therefore, you are instructed that if you find from the evidence the prisoner committed the offense charged, and at the time she committed the same her mind was so far disordered or diseased that she was incapable of distinguishing good from evil, right from wrong, she was irresponsible, and should be acquitted; or if she was at the instant of the alleged shooting deprived of reason, though then in a semi-conscious state, the act in law was non-volitional, and she is not responsible; or, if she was at that instant unconscious, she is not responsible; nor is she legally responsible if she was so impelled to shoot the deceased by an uncontrollable influence, and was at the moment unconscious of doing wrong; and she is not responsible, if by reason of her physical condition, superinduced from any cause, she became and was subject to violent frenzies and paroxysms of rage, in which her power of distinguishing between right and wrong was for the time destroyed or suspended, and the act charged was committed while in such a frenzy or paroxysm, and while such power to distinguish between right and wrong was destroyed or suspended; but you should not confound such a frenzy or paroxysm with a mere frenzy or paroxysm of anger or rage when she did distinguish between right and wrong, and did know what she was doing. In determining the question of the prisoner's sanity or insanity, you can take into consideration any facts tending to show the prisoner's state of mind before or after the alleged shooting, her physical condition and ailments prior to that time, her former relations with the deceased, and the love, affection, or hatred she may have entertained toward him during his life; whether or not there existed any motive to induce her to take his life, or whether she acted in a spirit of revenge; whether or not she shot the deceased to gratify a feeling of revenge she entertained against any other person than the deceased, or if she committed the act from mere wantonness. You can also, in determining the question of sanity or insanity, consider all the evidence given, either on behalf of the

prosecution or the prisoner, and apply to the facts and circumstances developed, your knowledge of human nature and the tendencies of the human mind, and thereby ascertain whether or not she was, at the time the mortal wound was inflicted, responsible for the act. "If it be shown that the intellectual faculties were so impaired as to produce a general habitual derangement of them, not traceable to some temporary cause, the law would presume the mind to have continued until the contrary was shown;" but the principle is different in reference to temporary or periodical insanity resulting from some transient cause, for then, "the presumption would be that the mind was restored to its normal condition when the disturbing element had ceased to operate."

To constitute a crime, the accused must have been acted upon by motives and governed by will in its commission. In the legal sense, a person bereft of reason can not act upon motives or be governed by will.

On a trial for murder, the accused is presumed to be sane until the contrary is made to appear by the evidence; and if insanity is relied upon as a defense, it must be established affirmatively by a preponderance of proof.

(After defining murder and manslaughter):

Were it not my duty I would not refer to what you know so well, that a promise to marry made by a woman who has a husband living or such an engagement made by a man whose wife still lives, would be against the policy of the law and consequently void whether followed by cohabitation or not. Such promises are not recognized by the law and if broken do not furnish any excuse for the commission of crime. The remembrance of the homes of your childhood, made holy and happy by the sacred ties of matrimony, will suggest the wisdom of the policy of our laws concerning marriage, without further remark from me.

In determining the questions of malice, deliberation and premeditation, you can consider in connection with the other evidence, threats made by her when she was sane, if she uttered any; any preparation she made to accomplish the fatal result; any disguise of her person; her action on the ferry-boat before and after the shooting and the motives by which she was actuated.

In determining the creditability of the witnesses who have testified in your presence—and the same principles apply to the prisoner who has been a witness on her own behalf—you can take into consideration their appearance and deportment on the witness stand when testifying, the probability of the truth of their statements independently of, or in connection with, the other evidence adduced; their anxiety or interest in the result of this trial; their friendly or hostile feelings towards the prisoner; to what extent they have been corroborated or contradicted by the oral or written evidence as well as their means of knowledge. From the fact that a rule cannot be established for testing the truthfulness of witnesses which would be applicable to every case, the law permits

jurors to test their creditability according to their best knowledge of the laws governing human action.

Believing, gentlemen, you will act dispassionately and justly, the case is now submitted to your consideration.

THE VERDICT.

The jury returned into Court, after forty minutes, and upon being asked the usual question as to the verdict by the Clerk, Mr. Sterrett replied: We find the prisoner *guilty of murder in the first degree*.

On June 3, 1871, Mrs. Fair was sentenced to be hanged on July 28. The Supreme Court ordered a new trial because of the admission of testimony that the general character of the prisoner was bad, and because her counsel was not permitted to make the closing speech to the jury. *People v. Fair*, 43 Cal. 137.

"A second trial became necessary. It took place at the close of 1872 and resulted in an acquittal. The verdict was far from satisfactory to the public and gave rise to some forcible utterances of opinion concerning the present manner of impanelling the juries in criminal cases. In making up the jury in this case, hundreds upon hundreds of persons were rejected upon the score of preconceived opinions. Practically, nearly everybody who had read the newspapers, who had any knowledge of passing events or any intelligence to apply to that bare knowledge, was ruled out as incompetent. It began to seem that it would be impossible to have a trial at all because it would be impossible to find in or around a thriving and active city like San Francisco twelve men sufficiently ignorant and stupid to fulfill the requisitions of jurors. Nothing but an idiot asylum could be reasonably expected to furnish such a panel as the learned Judges insisted upon having. At last after a long period and careful search, a dozen men were brought together, presumably the most unintelligent creatures in California, so exceptionally imbecile as to be unexceptionable! These worthies sat solemnly in the box listening to the haranges and theories of the learned and eloquent counsel of the accused lady, until it may be supposed that their mental condition became even more confused than hers was represented to have been at the time of the commission of the deed of killing. Indeed it is not satisfactorily shown that they had even been educated up to the comprehension of the idea that to shoot a human being is really a reprehensible act. Their finding was only what should naturally have been anticipated and after all it was the law or the administration thereof which insisted upon having such men for jurors, rather than the men themselves, that ought justly to be held answerable for their action."¹³

¹³ "Famous Trials," John Morse, Sr. Little, Brown & Co., Boston. 1874.

THE TRIALS OF THE ACTIONS BETWEEN SARAH
ALTHEA HILL (CALLING HERSELF MRS.
SHARON AND LATER MRS. DAVID S. TERRY)
AND SENATOR WILLIAM SHARON, FOR
DIVORCE AND ALIMONY AND FOR FRAUD
AND FORGERY, AND THE PROCEEDINGS
AGAINST JUDGE DAVID S. TERRY
AND HIS WIFE FOR CONTEMPT
OF COURT, SAN FRANCISCO,
CALIFORNIA, 1883-1888.

THE NARRATIVE.

In October, 1883, Senator William Sharon¹ of Nevada, a man of great wealth and a widower, brought a suit in the United States Court in California, against one Sarah Althea

¹ Sharon, William (1821-1885). Born in Ohio of Quaker parents, he arrived in California in 1849. First a real estate broker he later speculated in the mines on the Comstock lode in Nevada on a vast scale and accumulated a fortune of many millions. Was president of the syndicate that reorganized the Bank of California in 1875 and had charge of its Virginia City agency. Purchased the newspaper *Enterprise* of that city, 1874, United States Senator (Nevada), 1875-1881.

"Early in the 50's he married Miss Mary Ann Malloy in this city. She died in 1875 leaving a son and two daughters, one of whom (married Senator Newlands) has since died, leaving three children, and the other is married in England (to Sir Thomas Hesketh) and the mother of two children. The son is living and 29 years of age. Since the death of his wife the plaintiff has lived ostensibly as a widower in rooms at the Palace of which he is the proprietor. He is considered a shrewd, active, intelligent and courageous man of the world with a liking for public affairs. In his composition there appears to be a vein of sentiment and love of pleasure that has led him into illicit relations with the other sex and given him the reputation of a libertine." Judge Deady in *Sharon v. Sharon* 26 Fed. Rep. 348.

Hill,² alleging that she claimed to be his wife and in support of her claim had produced an alleged written contract of marriage signed by him, which under the law of California was the same as a legal ceremony. This paper he said was a forgery and he asked the Court to decree that they had never been married and that this forged instrument should be delivered to the Court and canceled.

A short time after this the woman brought a suit in the State Court in San Francisco, alleging that she was the wife of Senator Sharon by virtue of this written agreement, for a divorce from him and for a large sum as alimony out of the millionaire's property.

The United States Court after hearing all the evidence on the subject, including the woman's story, decided that the instrument was a forgery, that the parties were not husband and wife and that she must surrender the paper to be canceled and annulled by the Court.

But in the State Court the adventuress had better luck, for a local judge decided in her favor in the face of the most convincing evidence that she was forger and a liar and decreed that she should have a widow's portion of the Senator's estate as alimony.

In November, 1885, Senator Sharon made a deed of his property to his son, Frederick W. Sharon, and his son-in-law, Francis G. Newlands,³ afterwards a United States Senator, with various trusts for his family and concluding with a

² Hill, Sarah Althea, was born in Cape Girardeau, Mo., in 1848. Her parents died in 1854 leaving her and a brother a considerable estate. In 1870 she removed to San Francisco with a brother with whom she later quarreled and in 1883 took rooms at the Palace Hotel and met there the owner, Senator William Sharon. After the death of Judge Terry she became a mental wreck and in 1892 was committed to the insane asylum at Stockton, Cal., where she still lives. (1926.)

³ Newlands, Francis Griffith (1848-1917). Born Natchez, Miss. Ed. Yale and Columbian Coll. Law School; admitted to bar and removed to California, 1869, where he practised law; removed to Nevada, 1888. Member of Congress, 1893-1903. United States Senator, 1903-1915.

solemn statement that he had never been married to the woman, that the alleged contract and all the letters that she produced and said he had written to her were forgeries and perjuries, and directing his trustees to vigorously contest in every Court where a contest may be made, her false claims and pretensions.

A few days later he died, leaving a will in which his son was made his executor.

The death of Senator Sharon had the effect of abating the action in the United States Court and it was necessary that it should be revived. So, early in 1888 the trustee and executor filed in the United States Court what is known in law as a bill of Revivor and asking that the degree made by the Court years ago and which had never, on account of the action of the State Court, been carried out, be put in force and effect.

The case was such an important one, the amount of money was so large, the legal points were so intricate—the main one being the conflict of judgments of the Supreme Court of the United States on the same question—that the Justice of the Supreme Court of the United States came all the way from the National Capital to hear the case and with him sat Circuit Judge Sawyer and District Judge Sabin.

On September 3, 1888, when the Judges entered to deliver the judgment the defendant who was now known as Mrs. Terry, having in the interim married the notorious California character, David S. Terry,⁴ sat with her husband on front seats within the bar, he armed with a bowie-knife concealed on his person, and she carrying in her hand a small satchel which contained a revolver, loaded in its five chambers, and it was well known that several times during the previous hearings of her case she had drawn a weapon and threatened to shoot counsel and witness. (See *post*, p. 586.)

Mr. Justice Field read the opinion of the Court. It was a long and exhaustive one. But he had just concluded the de-

⁴ Terry, David S. (1823-1889). Born Todd Co. Ky. Was in Mexican and Civil wars; Judge Sup. Ct. Cal. 1855-57; Chief Justice, 1857; lived at Stockton, Cal.

cision on the first and main point, viz: Did the United States Court have jurisdiction to order the cancellation of the document which he declared it had, when Mrs. Terry seeing her case hopelessly lost, sprang to her feet and asked him if he was going to order her to give up her marriage contract, to be canceled. He commanded her to be seated when she cried out that he had been bought with Newland's money and everybody knew it, and wanted to know what price he held himself at. Justice Field directed the marshal to remove her from the court-room, to which she replied that she would not leave and nobody could take her. As the marshal approached her to carry out his instructions, her husband arose from his seat and he, declaring that no living man should touch his wife, dealt him a violent blow in the face. He thrust his hand under his vest where his bowie-knife was kept, but he was seized, his hands held from drawing his weapon and he himself forced down on his back. The marshal then removed Mrs. Terry from the court-room. Soon afterwards Judge Terry was allowed to rise and while accompanied by officers to the marshal's office, he succeeded in drawing his knife, which was taken from him only after a violent struggle. Deputy marshal David Neagle wrenched the knife from his hand, while four others held him, one of whom presented a pistol to his head, threatening at the same time to shoot him if he did not give up the knife. He was finally overpowered and removed from the court-room by the officers.

Justice Field, the disturbance being at an end, continued the reading of his opinion which decided all the questions in issue against Mrs. Terry and in favor of the estate of the deceased Senator. The other two judges concurred and later it was affirmed by the Supreme Court of the United States.⁵ It declared that the United States Court had jurisdiction to cancel a written contract of marriage on the ground of its forgery; that Senator Sharon had a right to bring suit, as he was a citizen of another state and that on his death the

⁵ For Justice Field's opinion see 36 Fed. Rep. 337. For the Supreme Court decision, see 131 U. S. 40; 90 S. C. Rep. 705.

right to revive it passed to his executor; that where the jurisdiction of a Court of the United States has attached in a suit brought by a citizen of a state other than that in which the court is held, the right of the plaintiff to prosecute his suit in such court to a final determination there cannot be arrested, defeated, or impaired by any subsequent action or proceeding of the defendant respecting the same subject-matter in a state court; that where different courts may entertain jurisdiction of the same subject, the court which first obtains jurisdiction will retain it to the end of the controversy, either to the entire exclusion of the other, or to the exclusion so far as to render the latter's decision subordinate to that of the court first obtaining jurisdiction, and it is immaterial which court renders the first judgment or decree; that the decree of a court of the United States, canceling a forged marriage contract, to stay the enforcement of judgments for property rights recovered upon such contract in a subsequent suit in a state court. And finally that the decision made by Judges Sawyer and Deady that the alleged marriage contract was a forgery and that it should be canceled was correct.

The Court then sentenced Terry to be imprisoned for six months and his wife to be imprisoned for three months, for contempt of court and they were at once taken to the jail at Alameda where they served out their respective terms.

The decision of Justice Field and his colleagues (affirmed as it afterwards was by the Supreme Court of the United States) finished forever the dream of the perjured adventurer to get her hands on the wealth of the millionaire Senator, for now the decree of the San Francisco Judge was not worth the paper it was written on, and a few months later the Supreme Court of the State drove the last nail into her coffin by reversing the local judge, thus declaring the whole litigation to be a mass of perjury, bribery and corruption.

THE FIRST TRIAL.⁶

*In the United States Circuit Court, San Francisco,
California, 1883.*

HON. LORENZO SAWYER,⁷ *Circuit Judge.*

HON. MATTHEW P. DEADY,⁸ *District Judge.*

October 3.

William Sharon a citizen of the state of Nevada, today filed a suit in equity against Sarah Althea Hill, to obtain a decree adjudging a certain paper in her possession, purporting to be a declaration of marriage between them, to be a forgery and enjoining its use and directing its cancellation. In his complaint, after stating his citizenship in Nevada and the citizenship of the defendant in California, he set forth: That he was and had been for some years an unmarried man; that formerly he was the husband of Maria Ann Sharon who died in May, 1875, and that he had never been the husband of any other person; that he had children and grandchildren; that he was possessed of a large fortune; that the defendant, an unmarried woman of about thirty years of age, resident in San Francisco, California, was publicly declaring and representing that she was his lawful wife and that they were married in that city on August 25, 1880, because she alleges on that day they had jointly made a declaration of marriage in writing, which by section 75 of the Civil Code

⁶*Bibliography:* Federal Reporter, vol. 20; Sawyer's Federal Reports, vol. 10.

⁷ SAWYER, LORENZO (1820-1891). Born LeRoy, N. Y. Grad. West. Reserve Coll. Admitted to Ohio Bar 1846; removed to Illinois, then to Wisconsin, then to California, 1850. Worked in mines and practised law at Sacramento; removed to San Francisco, 1853; City Attorney 1854; Judge Dist. Court, 1862; Judge Supreme Court, 1863; Chief Justice of California, 1868-1870; U. S. Circuit Judge 1870-1891; trustee Leland Stanford University; LLD. Hamilton Coll. 1877.

⁸ DEADY, MATTHEW P. (1824-1893). Born Talbot Co., Md. Removed to Va., then to Ohio; admitted to Ohio Bar 1847; removed to Oregon, 1849 and practised law there; member State Legislature 1850; Judge Territorial Supreme Court, 1857; United States District Judge 1859-1893.

of California, constitutes a marriage between them; and that thereby they became and were husband and wife according to the law of the state.

The plaintiff further alleged that these claims, representations and pretensions were wholly and maliciously false, and were made by her for the purpose of injuring him in his property, business and social relations; for the purpose of obtaining credit by the use of his name with merchants and others, and thereby compelling him to maintain her; and for the purpose of harassing him, and, in case of his death, his heirs and next of kin and legatees, into payment of large sums of money to quiet her false and fraudulent claims and pretensions. He set forth what he was informed was a copy of the declaration of marriage, and alleged that if she had any such instrument it was "false, forged, and counterfeited;" that he never, on the day of its date or at any other time, made or executed such document or declaration, and never knew or heard of the same until within a month previous to that time.

He therefore prayed the Court to decree that Sarah Althea Hill was not and never had been his wife, that she be perpetually enjoined from making such representations and that said contract be declared a forgery and be ordered to be delivered up to be canceled and annulled.

December 3.

W. H. L. Barnes,⁹ for plaintiff; *George W. Tyler*, for defendant.

The defendant under the name of Sarah Althea Sharon appeared and filed a demurrer to the suit.

⁹ BARNES, WILLIAM HENRY LIENOW (1836-1902). Born West Point where his father was an army officer; student at Yale 1853-1855; studied law at Springfield, Mass., and New York City; admitted to N. Y. Bar; entered the Union Army 1861 and in 1863 removed to California where he practised law with great success until his death. See Yale Coll. Cat. 1853-1856; San Francisco Chronicle, July 22, 1902, p. 12; Univ. of Cal. Cat. 1916.

March 3, 1884.

JUDGE SAWYER:¹⁰ There is no adequate remedy at law for complainant against the claim set up under the alleged contract, and no means at law to annul it at the suit of complainant. The defendant can choose her own time for enforcing her claim under the alleged contract, even after the death of the other party. Fraud has always been one of the principal heads of equity jurisdiction.

The instrument in question is alleged to be a forgery and a fraud. If it is a forgery, it is of course a fraud also. The only parties who appear to have any personal knowledge of the facts, so far as indicated—who, personally, know anything about this transaction—are the two parties to the alleged fraudulent contract. One is alleged to be many years older than the other; the complainant being alleged to be 60, and defendant 27, years old. The elder, in the ordinary course of nature, is more liable to die, and the contract, in such an event, would be in control of defendant, without any testimony to defeat the fraud, if fraud there be. The right to several millions of property might be, in after years, affected and controlled by reason of the alleged fraud. A great wrong and injustice may be thus perpetrated in consequence of it, unless a court of equity can take hold of and cancel it. There is no way, by an action at law, that we are aware of, to meet the conditions, or effectually dispose of this instrument. We are satisfied from the authority we shall cite, and numerous other authorities to the same effect, that this is a proper case for equitable relief, if the allegations in the bill be true; and, for the purposes of the demurrer, their truth is admitted.

We think this case is within the rule that is often laid down on this subject. Story, Equity Jurisprudence, § 700.

If this instrument is not void upon its face, then its validity depends upon testimony *aliunde*, and testimony which rests wholly *in parol*, which is liable at any time to be wholly lost, or placed beyond the reach of the parties injured by the fraud. In case of the death of complainant, the contract, and

¹⁰ 20 Fed. Rep. 1; 10 Sawy. 48.

the means of enforcing it, honest or otherwise, would be wholly in the control of the alleged forger and fraudulent claimant. She would be mistress of the situation and the heirs of a large estate might be wholly at her mercy. There is a charge of forgery and fraud; and we think the instrument, if a forgery and fraud, ought to be canceled. If there be no remedy in equity for such a wrong as is charged, then the law is, indeed, impotent to protect the community against frauds of the most far-reaching and astounding character. If there is no precedent for a case upon the exact state of facts disclosed by the bill, it must be because no instance exactly like it has ever before arisen. The principle, however, is established, and the occasion has arisen for making a precedent, if none ever existed before.

The demurrer is therefore overruled.

April 24.

The defendant set up as a plea in abatement to the pendency of an action in the Superior Court of the city and county of San Francisco, upon the theory that, as that action, though subsequently commenced, was founded upon the assumed validity of the alleged marriage contract, and involved a determination of that question, and the action, after being removed to the Federal Court, had been remanded back to the State Court by stipulation of parties, and was then on trial, the Circuit Court of the United States ought to stay its proceedings in the original suit until the State Court had expressed its opinion in reference to the validity of the contract in question, and then accept its judgment as conclusive.

She also set up that the Circuit Court of the United States had no jurisdiction of the case, on the ground that the plaintiff was, and had been for more than three years, a resident and citizen of California.

October 16.

The Court held both pleas to be bad, the first because the two suits were not identical, but for different objects,—the one proceeding upon an assumed valid contract, and asking for a divorce and a division of the community property, and the other seeking a cancellation of the contract for alleged forgery,—and because the two suits were pending in courts of different jurisdiction. The second plea as to the citizenship of Sharon was held to be false, no testimony impeaching the allegations of the complaint in that respect having been offered. 10 Sawy. 394, 22 Fed. Rep. 28.

Dec. 30, 1884.

The defendant was allowed thirty days to answer to the merits. Today she filed such answer. In her answer, the defendant not

only denied the several allegations of the complaint as to the citizenship of the plaintiff, as to the plaintiff's never having been the husband of any other person than Maria Ann Sharon, and as to her being an unmarried woman, and that her "claims were made for any other purpose but that of obtaining the recognition and support justly due" to her as wife of the plaintiff, but set up as a separate defense the action of the Superior Court of the city and county of San Francisco, and its judgment that the said alleged declaration of marriage was a genuine instrument by which the parties were made husband and wife.

To these answers, replications were filed by the plaintiff, and thereupon testimony was taken before the Examiner that occupied several months.

THE EVIDENCE.

The evidence was taken orally before an examiner of the court between February 5 and August 11, 1885, and covers 1,731 pages of legal-cap, written with a type-writer. Besides, there are a large number of exhibits, consisting of enlarged drawings or tracings of the disputed writings, and particular parts and peculiarities of them, and of the admitted writings of the parties, a large number of bank-checks containing plaintiff's signature; and photographic copies of the declaration; letters alleged to have been written by plaintiff to defendant, and known as the "Dear Wife" letters; a letter from plaintiff to S. F. Thorn, dated October 16, 1880; four letters written by defendant to plaintiff during the years 1881 and 1882; and a letter to the plaintiff written in 1882, and signed "Miss Brackett," besides tracings and other writings of third persons.

A brief summary is given here of the testimony and of the parties to the action and of the experts on hand-writing. The rest of the material evidence will be found in the judgments of Judges Deady and Sawyer.

William Sharon, is the plaintiff in this suit to declare the alleged contract of marriage a forgery, and testifies that he never signed the document in question (See it in full post p. 547); nor did he ever write the words "Dear Wife" in any letter addressed to the defendant. (See these letters post p. 549.)

He never heard of or saw this alleged contract until it was made public in September, 1883. He was never married to the defendant, never addressed her as his wife and never knew or heard

that she made any claim to be his wife until that day Sept. 8, 1883, when one William Neilson procured his arrest on the charge of adultery, alleging that he was the husband of defendant.

Sarah Althea Hill is the defendant here. Is 32 years old, born in Missouri. Lost her parents when quite young. Was educated for a time in a Convent and came to California where she had relatives in 1871. Came with her brother and lived with him about two years, from 1873, at the Grand Hotel, then lived some

time with a relative. Then kept house for a time with her brother, when she returned to the Grand where she remained until the opening of the Baldwin in 1877. In the Spring of 1880 she went to live at the Galindo Hotel in Oakland and returned to the Baldwin after the burning of the Galindo early in September of that year, but removed to the Grand about the last of the same month where she remained until December 6, 1881, when she was expelled therefrom by order of plaintiff. The Grand has been owned by plaintiff since 1880 and is connected with the Palace by a bridge across the street which separates them. She received some thousands of dollars from her guardian in Missouri which came from her mother's estate. Between 1878 and 1880 she was engaged in stock speculations. In 1878 and 1879 her account at the bank of California showed cash deposits to her credit of over \$16,000 of which sum only \$11 was left to her credit in February, 1880, and she owed a bill at the Baldwin of \$339. During the latter part of this ten years she had a serious love affair with a prominent lawyer of San Francisco which culminated on May 10, 1880, in an attempt to commit suicide in his office by taking poison.

After May 10th she made the acquaintance of plaintiff in a casual way on the street or in the Bank of California as a large stock-dealer, which resulted in his calling on her at the Baldwin and she calling at his office over the bank; it is not certain which called first. On September 25, 1880, plaintiff sent her notes from the Palace to the Baldwin

asking for a meeting with her elsewhere than at the latter place. This is the first written communication that ever passed between the parties (see post. p. 548.)

On September 29 she, at the request of plaintiff, went to the Grand to live where she was known as Miss Hill, plaintiff paying her a stipend of about \$500 a month and allowing her to visit his rooms at the Palace privately and occasionally inviting her there to take a meal with him. On December 5, 1880, the defendant wrote and plaintiff signed and delivered to her an agreement, of which the following is a copy: "100 shares of Belcher, held for Miss Hill, at 200 dollars a share, to be paid on delivery. W. SHARON. December 5, 1880." In the fall of 1881 plaintiff accused her of purloining some of his Belcher mine papers and revealing his business secrets and private affairs to other persons, which she denied at the time, but later admitted that after she left the Grand she found the papers in one of her trunks, and that she had not returned them. For this and other reasons, plaintiff is desirous of terminating his relations with defendant. On November 7, he effected an arrangement with her by which, in consideration of a receipt in full of all demands, and a promise not to trouble him any more, he gave her the sum of \$7,500, as follows: Cash, \$3,000; by note payable August 1, 1882, \$1,500; and by an agreement to pay her \$250 a month during the year 1883.

On November 19, the business manager of the Grand Hotel, by direction of plaintiff, sent defendant the following note:

"Miss S. A. Hill—DEAR MADAM: As we wish to otherwise occupy room 208 on December 1st, prox., you will please select another residence, and give up possession on that date, and much oblige

"Yours,

S. F. THORN."

Defendant did not vacate the room, and on December 5 the door was taken off; but at her request she was permitted to stay until the next morning, when, still not making any movement to leave, the carpets were taken up, and she was informed by the servants that if she did not go they had orders to put her out, and she left on the evening of December 6. Between the time of receiving the notice to quit and her final departure from the hotel defendant wrote three letters to plaintiff. (see post. p. 550.)

To none of these letters did he make any reply.

During defendant's residence at the Grand plaintiff was often absent from the city, and in the early part of 1881 was in Washington city some months; and it was not generally known or un-

derstood among the servants and guests of the hotel that she frequented the plaintiff's rooms, or that she remained there at night. In the fall of 1881 she secreted herself in the plaintiff's rooms and witnessed him and a woman undress and go to bed together, and she related the adventure to the seamstress of the hotel and others, with laughter, as something very funny. When the defendant left the Grand she remained in San Francisco, going first to the house of a negro woman, Martha Wilson, and afterwards keeping house and then boarding at several places. Plaintiff never visited the defendant after she left the hotel, but in the summer of 1882 she visited him at the Palace; and in August of that year she wrote him this letter:

"My Dear Senator: Won't you try and find out what springs those were you were trying to think of today, that you said Mr. Main went to, and let me know to-morrow when I see you? And don't I wish you would make up your mind and go down to them with Nellie and I, wherever they be, on Friday or Saturday. We all could have such nice times out hunting and walking or driving these lovely days, in the country. The jaunt or little recreation would do you worlds of good, and *us girls* would take the best of care of you, and mind you in everything. I wish we were with you this evening, or you were out here. I am crazy to see Nell try and swallow an *egg in champagne*. I have not told her of the feat I accomplished in that line, but I am just waiting in hopes of seeing her some day go through the same performance. As I told you to-day, I am out to Nellie's mother's for a few days, 824 Ellis street. What a lovely evening this is, and how I wish you would surprise us two *little lone birds* by coming out and taking us for a moonlight drive. But gracious me, it's too nice to think of; but I really wish you would. 'Twould do you good to get out of that stupid old hotel for a little while, and we'd do our best to make you forget all your business cares and go home feeling happy.

A."

Early in 1883 she went to the Palace to visit plaintiff, taking with her Nellie Brackett, the "Nellie" of the foregoing letter, a young girl whom she had had about her since the summer of 1882 as a sort of dependent companion; but she was expelled

therefrom by his order. Soon after Nellie Brackett wrote and sent a letter to plaintiff, which she swears she wrote at the defendant's dictation; but the latter says Nellie wrote it "out of her own head," and then told her of it.

"*Old Sharon:* When I first met you I felt quite honored to think I had on my list of acquaintances a United States senator, but to-day I feel it a double disgrace to know you. If you are a specimen of the men that are honored by the title of rulers of our country, then I must say that I pity America; for a bigger coward or upstart of a gentleman never existed, in my opinion, since last Thursday night. I was present with the lady who called on you; and to think of what a coward you must be! Your own conscience would not allow you to see her and politely excuse yourself, but you must send one of your Irish hirelings to do your dirty work. I hope God will punish you with the deepest kind of sorrow, and make your old heart ache and your old head bend. I am one not to wish evil to people generally, but with all my heart I wish it to you. You did her a mean, dirty trick, and tried in every way to disgrace her—a motherless, fatherless girl—because you knew she leaned on you, and was alone in the world; and a few weeks after God took from you your much loved daughter. Be careful that, after this disgraceful outrage of Thursday night upon her, God does not again bring you to grief, or some great misfortune. I hope he will; I hope he will. Instead of trying to hold her up in the world, you have tried every way in the world you can to disgrace her. I should think you would be so ashamed of yourself that you couldn't do enough to atone for the wrong you have done her. I love her, and I just hate you. It is well I am not her, or I would advertise you from one end of the world to the other. But she feels herself so much of a lady that she too tamely submits to your insults. Why, you are not good enough for me to wipe my shoes on, much less her. If you knew how insignificant you looked to-day—although I, a poor girl, and you could ride in your carriage. I feel really so much above you that I ask Mr. Dobinson to take my message rather than come in contact with yourself.

"The message of insult which you returned to me by Mr. Dobinson was so farcical that I had to laugh in Mr. Dobinson's face, and ask: 'Don't you think that man crazy?' I am a poor girl, but I feel myself so much better than you—you horrible horrible man.

MISS BRACKETT."

The *defendant* testified that in the summer of 1880, and before August 25th, by invitation of plaintiff, she visited him to get

points on stocks. During one of these visits plaintiff proposed to give her 500 a month to let him "love her;" in other words, to be

his mistress. She declined the offer, and he raised the sum to \$1,000, which she also declined, saying: "You are mistaken in the woman. You can get plenty of women that will let you love them for less than that." With that she rose to depart, saying she would not come any more, when the plaintiff put his back against the door, and said she was mistaken; that he was really in love with her, and wanted to marry her; when she replied: "If that is what you want we will talk about that." Later, a day or a month before August 25, which, she is unable to say, she returned to plaintiff's office, and accepted his proposition of marriage without any further preliminaries. Then the question arose as to how they should be married. He wanted the marriage secret, as he had a *liaison* on hand with a woman in Philadelphia, who would make trouble if she heard of it, which might injure his chances for a reelection to the senate from Nevada; and said that under the

Civil Code they could marry themselves privately, by the execution of a writing to that effect, to which she assented. Thereupon at his suggestion she sat down at his table and wrote at his dictation and at one sitting, the alleged declaration of marriage, which he then signed and returned to her, whereupon they quietly separated, she going to her lodgings at the Galindo Hotel, and he to Virginia, Nevada, where he remained some weeks, without any communication passing between them, until very shortly before the letter of September 25, which he addressed to her at the Baldwin. Soon after the receipt of this letter she removed, at the request of plaintiff, from the Baldwin to the Grand, and continued to live there, until December, 1881, during which period she was in the habit of visiting the plaintiff in his rooms at the Palace, day and night, and received from him the sum of 500 a month, with which to pay her bills.

On the genuineness of the signatures to the alleged marriage contract and the words "dear wife" in the letters, five witnesses testified that they were forgeries.

Dr. R. M. Piper, of Chicago, an expert of celebrity and a microscopist of experience and distinction, gave his unqualified conclusion that the signature to the declaration was not written by the plaintiff, and that it was written by the witness Gumpel; and that the "Dear Wife" letter in ink, and the word "wife" in the other two were tracings made by defendant.

H. C. Hyde, *R. C. Hopkins*, *J. P. Martin*, *J. H. Dobinson* and *F.*

W. Smith also testified. The latter three were very familiar with plaintiff's writing. *Mr. Martin* was in his employ as book-keeper, cashier and otherwise for ten or fifteen years. *Mr. Dobinson* had been his private secretary since 1876 and *Mr. Smith* had been the paying teller of the Bank of California since 1879, during which time he probably paid thousands of the plaintiff's checks. And from their knowledge of the plaintiff's writing they were de-

cidedly of the opinion that the disputed signature was not his.

Mr. Hopkins had been the keeper of the Spanish archives in the United States surveyor general's office for thirty years and during that time had been much engaged in studying writings with a view to determining the question of their integrity and making tracings of Spanish grants and documents. He said he could not state positively whether the signature to the declaration was plain-

tiff's or not, but was certain that it was written there before the body of the instrument was, and that the "Dear Wife" letter in ink was a tracing. *Mr. Hyde*, a well known and experienced expert in the State Court said, without having made any examination of it, that he thought the signature to the declaration genuine, but now after a thorough examination of the subject was certain that it was not genuine, and that the "Dear Wife" letter in ink was a tracing with the word "wife" "built in."

After an examination of the face of the instrument under the microscope, both *Hyde* and *Piper* were of the opinion that the signature to the declaration was written in different ink from the body of the instrument, and that the latter was written after the paper had been folded, as shown by the spreading and absorption of the ink where the pen crossed a fold.¹¹

Mr. Houghton the Master in Chancery who took the testimony in the federal Court in a letter to the Editor, says: In the testimony taken before me as Examiner the falsity of the signature to the alleged marriage contract was conclusively proved, by a most interesting exhibit, which convinced both the judges who sat in the case that the signature was a forgery. That exhibit was not referred to in either decision, however. Early in the proceedings before the Examiner several checks on the Bank of California signed by William Sharon were produced and submitted to inspection by counsel for the respondent, who spent many hours in comparing the signatures of the checks with the alleged signature of Sharon to the document claimed to be a marriage contract between the parties to the case. In conformity with a suggestion of the Examiner a number of checks were selected, the signatures of which, it was agreed, appeared to most nearly resemble the Sharon signature on the document referred to, and these several signatures, together with the disputed signa-

¹¹ "On the whole, the expert testimony, both in skill, character, and numbers, preponderates largely in favor of the plaintiff, and proves with as much certainty as such evidence well can, that the signature to the declaration is false and forged, and that the "Dear Wife" letter in ink, and, at least, the word "wife" in the others, are tracings made by the defendant of letters written to her by the plaintiff with the word "wife" substituted for "Miss Hill" or "Allie." And this conclusion coincides with the impression made on my own mind by the examination of the writings."—Judge Deady.

ture, in two lists, each on a single page, were photographed. Frederick Smith, a paying-teller of the bank, who for many years had cashed Sharon checks, was called as a witness, the photographs placed in his hands, and he unhesitatingly identified all the photographed signatures as genuine with the exception of the disputed one, which he declared a forgery. His judgment was confirmed by other expert witnesses. The Examiner showed the photographs to Judge Sawyer, before whom the case was tried, with the query: "Do those signatures all look alike to you?" He recognized a difference between the disputed signature and the others. The photographs were introduced as exhibits in the case, and are on record in the office of the Clerk of the United States Circuit Court in San Francisco; and were one of them, preferably the one containing the greater number of signatures, reproduced on your pages, it is likely that the average observer may agree with the experts that all the signatures were written by the hand of a man of nervous temperament with the exception of one, which is the deliberately and smoothly written production of an expert penman."

For the defendant three witnesses testified on this point and gave their opinion that the writings were genuine—*C. D. Cushman*, *Samuel Soule* and *M. Gumpel*.

Cushman was not an expert but had a knowledge of plaintiff's handwriting during some years spent in his employ. His general standing and character was not questioned but he had made himself a very bitter partisan in this case from the beginning.

Soule was 78 years of age and professed to speak as an expert or a "judge of handwriting" on

very slender grounds. His opinion was based on a comparison made out of Court with writings not produced or admitted to be plaintiff's.

Gumpel was a lithographer and an expert of considerable experience besides being a remarkable penman.

But JUDGE DEADY in deciding the case had the following to say as to *Gumpel's* evidence:¹²

¹² His relation to the case, and his conduct as a witness therein, are both suspicious and unsatisfactory, and lead me to regard him and his testimony with distrust. On October 16, 1883 he writes to the attorney of the plaintiff, Mr. Barnes, suggesting that the other side wished to retain him as an expert, but he preferred to be employed by Mr. Barnes, and is anxious to know if he wants him. Afterwards he was retained by the plaintiff as an expert, and examined the disputed writings, prior to the trial in the State Court so far as he had an opportunity. On the trial of that case he was not called as a witness by the plaintiff, because, as he says, he had told Mr. Barnes he could do him no good. Thereafter, according to his statement, he met the defendant's attorney, Mr. Tyler, on the street, with whom he had not spoken for two years, and against whom he had "a great grudge" on account of some former "bad" treatment,

August 5, 1885.

The examination of witnesses before S. C. HOUGHTON,¹⁸ Master in Chancery, was continued today.

who immediately ran up to him, begged his pardon for the past, and asked him to be a witness on his side of the case. To this the witness replied, "I think you have a great deal of audacity to speak to me;" and, after some further parley, said: "You know how to secure the attendance of a witness;" and added, "If you subpoena me in this case, I give you due warning that I will bust your case higher than a kite; look out!" Notwithstanding this friendly warning, which looks as if it was given and received in a Pickwickian sense, Mr. Tyler had the witness subpoenaed, and he went upon the stand and swore that the signature to the declaration was genuine, and that the "Dear Wife" letters were written by the plaintiff, and were not tracings, which testimony he repeated in this case. On his examination in chief the witness was very confident that he could detect any tracings—said he had done so "at the first glance" in the case of *Treadwell v. Bank of California*—but on being asked on cross-examination to say which of plaintiff's exhibits, 200 and 201, was the tracing, and which was the original—the one being a letter written by the plaintiff on January 5, 1885, to an expert witness, and the other a tracing thereof made by the latter—he sulked and would not answer. Said he would if he had a month to examine them in and the plaintiff would pay him for his time. His opinions on the subject of the writings are mere bald assertions unsupported by any intelligent or convincing reasons. He first pretended that his "method" was a secret and spoke of it as something unusual and even occult, that he could not explain. But afterwards he was compelled to admit that he had no special "method," but simply compared the one writing with another and came to a conclusion, from their resemblance or dissimilarity, whether they were written by the same person or not. I repeat that I am constrained to regard his connection with the case with suspicion, and his testimony as unsatisfactory, and with distrust. The possibility of his having written the disputed signature himself will be considered further on.

The disputed signature is evidently the work of a skilful penman. The lines are comparatively smooth and steady while the exact contrary is characteristic of the plaintiff's writing. Indeed, I very much doubt if he could write such a signature as the one to the declaration. Who did write it is not absolutely necessary to decide. It was not written by plaintiff and may have been written by Gumpel. Dr. Piper says he did write it and though he denies it, yet it may have been done by him, not feloniously but as an idle fancy or aimless experiment. Nothing is more certain than that it was written before the declaration and with no apparent wrongful intent. In the fall of 1883 Gumpel while in the employ of the plain-

*William M. Stewart*¹⁴ and *Oliver P. Evans*¹⁵ for the Complainant, *William Sharon*. *W. B. Tyler* for Respondent.

A. U. Piper (recalled).

Mrs. Terry, (sitting at a table reading the deposition of Susan

tiff wrote from memory the signature of plaintiff which is more like the signature of the plaintiff than any of his admitted signatures.

Learning that Mr. Barnes suspected that there was a secret agreement between the witness Gumpel and Mr. G. W. Tyler under which the expert was to swear to the genuineness of Sharon's signature to the alleged marriage contract, for a very large sum of money to be paid to him, Mr. Tyler wrote out in his own hand such a document, signed it with his and Gumpel's names and placed it in his private drawer in his office. His chief clerk, John F. McLaughlin, then called on Mr. Barnes and told him he had found among his employer's private papers a contract of the kind he, Barnes, suspected, which he would turn over to him for a good consideration. Mr. Barnes inquired how much he wanted. He replied, "Mr. Sharon has sworn in his pleadings that his income is thirty thousand dollars a month; give me one month's income and I will steal the agreement and give it to you. This was agreed to and one night McLaughlin brought the paper to Mr. Barnes and received \$30,000 in new bank notes, no third party being present. Instead of going back to Tyler, McLaughlin took the next steamer to Honolulu. When Mr. Barnes found he had been hoaxed, Tyler was prosecuted for obtaining money under false pretenses but the jury disagreed on a second trial. Tyler had never received any part of the money. In Honolulu McLaughlin started a steam-laundry and lost the greater part of the money. He went from there to Australia where he died. Shuck "Bench and Bar of Cal." p. 178.

¹³ Houghton, Stephen Chase. Born Lincoln, Me., 1846. Educated in the Massachusetts public schools and studied law at San Francisco; admitted to California Bar, 1878; Standing Master in Chancery, Standing Examiner in Chancery, Commissioner, Referee in Chinese Immigration Cases, United States Circuit Court, California, 1879-1892.

¹⁴ Stewart, William Morris (1827-1909). Born Lyons, N. Y. Educated at Yale; 1850 removed to San Francisco; Atty-Gen. 1854; was a miner for a time; removed to Nevada 1860; and practised law there; member Territorial Council, 1861 and of Constitutional Convention 1863; United States Senator 1864-1875, 1886-1905; Trustee Stanford University.

¹⁵ Evans, Oliver Perry (1843-1911). Born Va. Captain in Civil War in Confederate Army; removed to San Francisco 1868 where he practised law until 1878. Judge Superior Court 1880-1883; died Berkeley, Cal. See *San Francisco Chronicle*, May 6, 1911.

E. Smith). I won't sign my deposition unless it contains everything that I said about Stewart's family. He don't dare to take me up on it. I won't sign that evidence unless that is put in.

The Examiner. Don't talk about it now.

Mrs. Terry. It has got to go in.

The Examiner. This is no proper time for bringing up any matter of that kind. A witness is under examination.

Mrs. Terry. When I see this testimony, I feel like taking that man Stewart out and cowhiding him. I will shoot him yet; that very man sitting there. To think he would put up a woman to come here and deliberately lie about me like that. I will shoot him. They know when I say I will do it, that I will do it. I shall shoot him as sure as you live; the man that is sitting right there; and I shall have that woman, Mrs. Smith, arrested for this, and make her prove it.

The Examiner. Those are not matters which should be brought up now. Don't talk in this way when a witness is under examination.

Mrs. Terry. I say no jury will convict me for shooting a man that will bring a woman here to tell such things on me. They have never dared, when they put me on the stand, to ask me a question against my character yet—never dared. If they have got so much against it, why didn't they dare ask me some questions when I was on the stand?

The Examiner. Mr. Tyler, can you put a stop to this interruption?

Mrs. Terry. Mrs. Smith said nothing here about my being in a weak condition in Dr. Murphy's office—that has been put in the testimony—and that I wanted her to play nurse to me. She was a nurse to me and I paid her for it.

The Examiner. Mr. Tyler, can you put a stop to this? I find that I cannot, and unless you can, I shall have to adjourn the examination and bring this matter to the attention of the court. This thing has gone altogether too far already, and unless it can be stopped here I certainly shall adjourn the examination.

Mr. Tyler. Let us get through this afternoon, anyway.

Mrs. Terry. I know the woman he is living with, and he brought his wife out here to cover it up. I will expose the whole thing; about the child and all.

The Examiner. Will you remain quiet until this examination is completed?

Mrs. Terry. I don't know whether I will remain quiet without I get that man's life. I get so worked up when I read this testimony of Mrs. Smith.

The Examiner. Let me take that testimony until after the examination is over.

Mrs. Terry. I expect you had better.

The Examiner. You may finish reading Mrs. Smith's testimony after the close of the session. I hope, now, I shall not be compelled to bring your misbehavior to the attention of the court; for if I should do so the court will surely punish you for contempt.

Mrs. Terry. That would be nothing unusual if Stewart asked it.

The Examiner. I shall ask it in this instance, because my duty compels me to do so. You persist in interrupting the proceedings, and it is impossible for the examination to go on. If you will wait until we get through with this examination, if you have anything to say, then it will be a more appropriate time to say it.

Mrs. Terry. I can hit a four-bit piece nine times out of ten.

The Examiner. If you interrupt the proceedings any further, I shall adjourn the examination and call the attention of the court to this matter, and it won't be my fault if the court does not take such measures as will put a stop to such interruptions. I have at all times been disposed to be as tolerant and lenient with you as possible, but toleration should have a limit, and the limit has been reached. Early in the proceedings the court suggested that I ought to be very lenient with you, and, in conformity to that suggestion, as well as from my own inclination, I have treated you with the greatest consideration and forbearance all through.

Mrs. Terry. That is enough; you needn't say anything more.

The Examiner. But I propose to say something more.

Mrs. Terry. All right; then I'll talk.

The Examiner. Since the commencement of the examination in this case, your offensive conduct has frequently disturbed the orderly course of the proceedings, and I have tried in every way which my imagination could suggest to check you—by considerate treatment, by ignoring your misbehavior, by courteous protest and persuasion, by rebuke, by appeals to your counsel, by threatening to report your conduct to the court. But, instead of abating, the evil is constantly growing worse. Now this thing must stop.

The examination proceeded. *Mrs. Terry* made further statements defamatory of the character of people not connected with the case.

Victor Craig (recalled). Pending his examination *Mrs. Terry* drew a pistol from her sachel and held it in her right hand, the hand resting for a moment upon the table with the weapon pointing in the direction of *Mr. Evans*. The hand and the weapon then dropped beneath the table.

Mr. Evans. What do you want? Do you want to shoot anybody?

Mrs. Terry. I am not going to shoot you just now, unless you would like to be shot, and think you deserve it.

Mr. Evans. No; I would rather not be.

The Examiner. Unless you will give that pistol into my custody, I shall adjourn the examination and report this matter to the court.

Mrs. Terry. I am not going to shoot anybody. I will give it into your custody.

The Examiner. I will adjourn this examination until to-morrow. Won't you give me that pistol?

Mrs. Terry allowed the examiner to take her pistol.

Mr. Evans. We don't desire to proceed any further, under the circumstances. We ask that this matter be reported to the court.

Mrs. Terry. You shall not slander me. These men know they need it, and I told the Supreme Court they knew they needed it.

Mr. Evans. I shall decline to proceed any further.

August 5.

Today the report of the above proceedings before the Master in Chancery were read by the Court (Mr. Justice Field and Judge Sawyer). The Master added that upon several previous occasions Mrs. Terry had brought a pistol into the room and had held it in her hand while witnesses were being examined.

MR. JUSTICE FIELD: In the case of *William Sharon v. Sarah Althea Hill*, the examiner in chancery appointed to take the testimony has reported to the court that very disorderly proceedings took place before him on the third instant; that at that day, in his room, when counsel of the parties and the defendant were present, and during the examination of a witness by the name of Piper, the defendant became very much excited, and threatened to take the life of one of the counsel, and that, subsequently, she drew a pistol, and declared her intention to carry her threat into effect. It appears, also, from the report of the examiner, that on repeated occasions the defendant has attended before him, during the examination of witnesses, armed with a pistol. Such conduct is an offense against the laws of the United States, punishable by fine and imprisonment. It interferes with the due order of proceedings in the administration of justice, and is well calculated to bring them into contempt. I, myself, have not heretofore sat in this case, and do not expect to participate in its decision; I intend in a few days to leave for the east, but I have been consulted by my associate, and have been requested to take part in this side proceeding, for it is of the utmost importance, for the due administration of justice, that such misbehavior as the examiner reports should be stopped, and measures be taken which will prevent its recurrence. My associate will comment upon the laws of congress which make the act committed by defendant a misdemeanor, punishable by fine and imprisonment. The marshal will be directed to disarm the defendant whenever she

comes before the examiner, or into court, in any future proceedings, and to appoint an officer to keep strict surveillance over her, in order that she may not carry out her threatened purpose. This order will be entered:

Whereas, it appears from the report to this court of the examiner in chancery, in this case appointed to take the depositions of witnesses, that on the third day of August, instant, at his office, counsel of the parties appeared, namely: William M. Stewart, Esquire, and Oliver P. Evans, Esquire, for the complainant, and W. B. Tyler, Esquire, for the defendant, and the defendant in person, and that during the examination before said examiner of a witness named Piper, the defendant became excited and threatened the life of one of the counsel of the complainant present, and exhibited a pistol with a declared purpose to carry such threat into effect, thereby obstructing the order of the proceedings and endeavoring to bring the same into contempt;

And whereas, it further appears that said defendant usually attends before the said examiner carrying a pistol, it is ordered that the marshal of this Court take all such measures as may be necessary to disarm said defendant and keep her disarmed and under strict surveillance while she is attending the examination of witnesses before said examiner and whenever attending in Court and that a Deputy be detailed for that purpose.

Judge Sawyer will explain for the benefit of counsel the statutes of congress. It is to be observed here that the block embracing this building and the custom-house is under the exclusive jurisdiction of the United States. Every offense committed within it is an offense against the United States, and here the state has no jurisdiction whatever. This fact seems to have been forgotten by parties.

Judge Sawyer: The occasion, I think, calls for some observation on my part in regard to this matter. The taking of testimony in this case has been going on for a long time. During the progress of the case many things had occurred that were exceedingly unpleasant, but through the considerate and commendable forbearance of the examiner and of counsel, a point had been reached where the testimony was nearly completed, and it was hoped would soon be closed without further interruption, when the incident occurred which imperatively required this report from the examiner. The occurrence is one of great gravity. The lives of officers of the court, in attendance before a branch of the court, in

the performance of their duties as counsel, being in danger, the examiner justly felt that he could no longer refrain from reporting the action of the defendant without a violation of official duty. In connection with this matter, I shall call attention to some facts and some points of law that may not be within the knowledge of the party implicated, and may even have escaped the notice of counsel, in order that such offenses against the laws of the United States may not in future be ignorantly committed. Of course, we are all familiar with the maxim that everybody is supposed to know the law, yet, in point of fact, it often occurs that many do not. I shall therefore proceed to state some provisions of the statutes in relation to transactions of the kind reported that may not have attracted notice, in order to guard against any such future misconduct as will lead to serious difficulties and necessitate severe punishment. As was remarked by the presiding justice, this building is under the exclusive jurisdiction of the United States. The block on which it stands has been purchased by the United States from the state of California, by the consent of the legislature, for the erection of the public buildings upon it; and it is by the constitution thus placed under the exclusive jurisdiction of the United States. All offenses committed in this edifice, or upon the block of land upon which it stands, are offenses against the United States, punishable exclusively by the national courts. This point was authoritatively decided at the last term of the Supreme Court of the United States, in the case of *Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525; S. C. 5 Sup. Ct. 995. Every offense recognized by law, from the highest down to a simple assault, committed in this building, or on this block, is an offense against the United States, and punishable as such by the courts of the United States. The United States statutes have not defined specifically, in terms, every offense, but they have defined a number of the graver class, and then made a general provision covering all others. Section 5391, Rev. St., provides as follows:

"If any offense be committed in any place which has been, or may hereafter be, ceded to and under the jurisdiction of the United

States, which offense is not prohibited, or the punishment thereof is not specially provided for, by any law of the United States, such offense shall be liable to and receive the same punishment as the laws of the state in which such place is situated, now in force, provide for the like offense, when committed within the jurisdiction of such state."

Thus an act not specifically made an offense by the statutes of the United States, but which is an offense under the laws of the state wherein performed, is made, by this general provision, also an offense under the laws of the United States, and punishable by the same penalties which are inflicted under the laws of the state. Under the provisions referred to, the acts, as reported by the examiner in this case, constitute at least two, if not three, offenses against the United States—perhaps four. Section 5399 (omitting that portion relating to other matters) provides as follows:

"Every person who, by threats, endeavors to influence, intimidate, or impede any officer in any court of the United States in the discharge of his duty, or by threats or force obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

In this matter, as reported by the examiner, there was an obstruction of an officer—the examiner in chancery of this court—and of counselors of the court, who are officers of the court, in the discharge of their respective duties, and also an impeding of the due administration of justice. The obstruction resulted in an adjournment of the examination, as neither counsel nor examiner were willing to proceed in face of the menace offered to counsel, accompanied by the exhibition of a pistol, by the defendant in the suit. Again, the Penal Code of this state makes the following provision; and the general statute which I have read, making all offenses in the state which are not specifically defined in the statute of the United States offenses against the United States, and punishable by the same penalty as in the state, makes this an offense against the United States. Section 417, Penal Code Cal., provides that—

"Every person who, not in necessary self-defense, in the presence

of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same in any fight or quarrel, is guilty of a misdemeanor."

Another section provides that the punishment for misdemeanors, not otherwise specially provided for, shall be by "imprisonment in the county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or both." Pol. Code, § 19. Again, section 467 of the Penal Code of California provides as follows: "Every person having upon him any deadly weapon, with intent to assault another, is guilty of a misdemeanor." And there are various other cognate offenses, all of which are offenses against the United States, by adoption in the section which I have already read. As before remarked, every offense which is committed in this building, or on this block, from the highest down to an assault, is an offense against the United States, exclusively punishable by the courts of the United States; and attention is called to this, so that parties may not in future unwittingly commit any of these offenses, and subject themselves to the penalties inflicted by the law.

This report of the examiner having been made, it imperatively calls for some action by the court. It cannot be passed unnoticed. It is proper to observe that counsel for the opposing party have exhibited great moderation, and have only sought the protection of their lives. They have not asked the court to proceed to punish defendant for the contempt committed. They only ask, and it is certainly a very moderate and reasonable request, that they shall not be required to practice their profession in the circuit court of the United States at the muzzle of their opponent's pistols. The court, of its own motion, the matter having been brought to its attention, might well proceed upon the case as reported, as a gross contempt of court. It is unquestionably a contempt. It is a contempt committed before an officer lawfully taking testimony in this case, the proceeding being a part of the trial of the case, in the chambers of the judge adjoining the courtroom; the examiner being an adjunct of the court—a part of

the court itself. This act reported is undoubtedly as distinctly and clearly a contempt of court as though committed in the presence of the judge, in the court-room, while in the act of trying a case, either with or without a jury. This point is well discussed by Judge HAMMOND, of the district of Tennessee, in *U. S. v. Anonymous*, a case of much milder type of contempt, 21 Fed. Rep. 761.

But these same acts, which constitute a contempt in this case, also constitute several offenses under the laws of the United States, punishable in the ordinary course of criminal proceedings. There are but two objects of proceeding by process for contempt. One is to punish a contempt already committed, as a past offense, where, perhaps, the criminal statutes do not cover the case, or, in some cases, where they do, but where the exigencies of the occasion require a more summary and prompt remedy; and the other object is to enforce the performance of some duty or act which is still in the power of the party to perform. So far as future action is concerned, we have endeavored to provide for the safety of counsel by the order which we have just made, requiring the marshal to see that the defendant does not enter the room of the examiner, or the chambers of the judge, or the court-room, while armed; and also by calling attention to the liability to criminal punishment for other similar acts that may be performed in the future. As to the past offense, we might well proceed to punish the acts reported as a gross contempt of court. But where the same acts constitute both a contempt of court, which could be punished as such—that is to say, as a past contempt—and at the same time constitute an offense against the laws of the country which may be punished on indictment or information, though sometimes it is necessary to promptly vindicate the court by means of the more summary process for contempt, as a general rule, it is desirable to proceed criminally, if, in the ordinary exercise of the criminal jurisdiction of the court, it can just as well be done. In such cases, where there is no special end in the administration of justice to be attained by a proceeding for contempt, it is deemed better to adopt the more deliberate

mode of procedure applicable to the enforcement of the criminal laws of the country. We have not been asked to proceed by process of contempt, and as there appears to be no special call for hasty action, we deem it advisable, under the circumstances of this case, to proceed in the more deliberate, careful, and less harsh proceeding, under the charge of the government, than to proceed by process for contempt. We shall therefore waive the process for contempt; and the attention of the United States attorney having now here been called to the breach of the laws, as reported by the examiner, we shall leave the matter to such course of proceeding as he may deem it his duty to take, to enforce the criminal laws of the country.

Mr. W. B. Tyler. If the court please: Of course I deprecate any such acts as those in the court-room, or in the examiner's office, as much as anybody; but I would suggest that there be an addition made to that order of the court, and that is that nobody be allowed to enter that room armed during the progress of this examination. I think it is necessary, I think it is proper, and there is no more reason—

JUSTICE FIELD. We have no evidence that anybody has gone into the room armed. We have only made a rule to apply to what is brought to our knowledge.

Mr. Tyler. As his honor, Judge SAWYER, remarked, several very unpleasant things have occurred in there that perhaps your honor has no more evidence of—

MR. JUSTICE FIELD. I know nothing of them, of course.

JUDGE SAWYER. We considered that matter to which you refer, Mr. Tyler, and we had no evidence of anything of that kind. Nobody but counsel could be guilty of any such breach of propriety; and, after calling attention to the statutes of the United States, and to the fact that carrying arms for an unlawful purpose is an offense against the statutes, we hardly expect that any member of the bar of this court will presume to enter the examiner's room or the court-room armed. We cannot presume that members of the bar will be guilty of any such professional misconduct.

MR. JUSTICE FIELD. I may add here, further, that any lawyer who so far forgets his profession as to come into a court of justice armed ought to be disbarred from practice.

Mr. Tyler. Witnesses are sometimes armed.

JUDGE SAWYER. Witnesses, it is true, may come into court armed; but, with the admonition we have given, and as there has been no evidence that witnesses have come before the examiner armed, we think it hardly advisable to anticipate any difficulty in that direction. We apprehend that witnesses will be likely hereafter to conduct themselves with propriety.

Mr. Tyler. I would say to his honor, Judge FIELD, that, although I thoroughly concede everything he says, in certain instances, yet where a lawyer has information that a witness will come armed, he will very likely do as I myself have done,—come armed, to protect himself.

MR. JUSTICE FIELD. Then you would act very improperly. You should report the fact to the court and let the man carrying arms be arrested.

JUDGE SAWYER. When you have any such information, you should have the party put under bonds, or apply to the court in advance for protection.

MR. JUSTICE FIELD. Any man, counsel or witness, who comes into a court of justice armed, ought to be punished, and if he is a member of the bar, he ought to be suspended or removed permanently. That is the doctrine that ought to be inculcated from the bench everywhere. So far as I have the power, I will enforce it.

Mr. Tyler. So should I enforce it.

MR. JUSTICE FIELD. The reason that you give for carrying arms in court is not a good reason.

Mr. Tyler. Where witnesses do come armed—

MR. JUSTICE FIELD. Then report the fact to the court; that is the proper way.

Mr. Tyler. That will not stop a bullet.

JUDGE SAWYER. Then arrest the parties in advance, and put them under bonds, or apply to the court to have them examined and disarmed before permitting them to enter the court. The laws are very severe.

Mr. Tyler. The laws are very severe, but it is harder on the man that gets the bullet.

MR. JUSTICE FIELD. I don't mean to say that there may not be times in the history of a country, in certain communities, when everybody is armed. That was the case in the early days of California, when people traveled armed; but at this time, when law is supposed to be supreme, when all good men are supposed to obey it, and where counselors are sworn to obey the law and to see it properly administered, the carrying of arms into a court cannot for a moment be tolerated.

Mr. Tyler. Your honor will excuse me one minute, as this is a personal matter, and a little personal reflection on myself, in view of another proceeding which has taken place—

MR. JUSTICE FIELD. I know nothing of any other proceeding—

Mr. Tyler (interrupting). But as you have expressed your opinion that a lawyer who, under any circumstances, should come into a court of justice armed should be disbarred, and that was my exact case, I certainly have a right to explain that circumstance. During the trial of a case in the superior court—

MR. JUSTICE FIELD. We do not care about hearing of that. We cannot go into that matter at all.

Mr. Tyler. Don't you consider that to make that assertion as an

absolute assertion, when it applies directly to a member of the bar of this court, and has nothing to do with this matter, that the member may answer? You have made that assertion, and I went into a court-room armed with a pistol, for the purpose of preserving, as I supposed, my father's life and my own; and now I make the explanation.

MR. JUSTICE FIELD. It is not worth while to pass any words with the court. We do not take our rules of procedure from the state courts, and if any lawlessness is permitted there, we should not be governed by that fact. I trust I never shall be called to preside over a federal court where any lawyer will presume to come into it armed, and if he does, I shall exercise such authority as is vested in me to prevent it. Whatever may have been done in a state court, I know nothing about.

September 29, 1885.

The case was argued by counsel on both sides and submitted to the Court on the pleadings and proofs.

W. H. L. Barnes, William M. Stewart, Oliver P. Evans, and H. I. Kowalsky, for plaintiff.

George W. Tyler, W. B. Tyler, and David S. Terry, for defendant.

November 13, 1885.

The Plaintiff, *William Sharon*, died today.

December 26.

Today the COURT delivered its judgment, deciding all the questions of law against the defendant.

JUDGE DEADY (omitting the questions of law). Whatever deductions may be made from the plaintiff's credibility, on account of his participation in this transaction and interest in the result, must also be made from hers, and even more; for, in the very nature of things, this is a game in which the woman has more at stake than the man. And, however unfavorably the plaintiff's general character for chastity may be affected by the evidence in this case, it must not be forgotten that, as the world goes and is, the sin of incontinence in a man is compatible with the virtue of veracity, while in the case of a woman, common opinion is otherwise. Nor is it intended by this suggestion to palliate the conduct of the plaintiff or excuse the want of chastity in the one sex more

than the other, but only, in estimating the relative value of the oath of these parties, to give the proper weight to the fact founded on common experience, that incontinence in a man does not usually imply the moral degradation and insensibility that it does in a woman.

And it must also be remembered that the plaintiff is a person of long standing and commanding position in this community, of large fortune and manifold business and social relations, and is therefore so far, and by all that these imply, specially bound to speak the truth, and responsible for the correctness of his statements; and all this, over and beyond the moral obligation arising from the divine injunction not to bear false witness, or the fear of the penalty attached by human law to the crime of perjury. On the other hand, the defendant is a comparatively obscure and unimportant person, without property or position in the world. Although apparently of respectable birth and lineage, she has deliberately separated herself from her people, and selected as her intimates and confidants doubtful persons from the lower walks of life; and, so far as appears, is only amenable to legal punishment for any false statement that she may make in this case, which all experience proves is not sufficiently certain to prevent perjury in legal proceedings. And by this nothing more is meant than that, while a poor and obscure person may be naturally and at heart as truthful as a rich and prominent one, and even more so, nevertheless, other things being equal, property and position are in themselves some certain guaranty of truth in their possessor, for the reason, if none other, that he is thereby rendered more liable and vulnerable to attack on account of any public moral delinquency, and has more to lose if found or thought guilty thereof than one wholly wanting in these particulars.

But this is not all. There is much in the testimony of the defendant in this case that must affect her credibility unfavorably. It is full of reckless, improbable, and in some instances undoubtedly false statements. Take this one, for illustration. The story that some time in 1880, and prior to the date of the alleged marriage, she gave the plaintiff \$7,500 to

invest in stocks for her, is undoubtedly false; and she has attempted to support it, not only by perjury, but by forgery. Perceiving that the payment to her, under the circumstances, of that large sum, shortly before she left the plaintiff's hotel, bore upon its face the evidence that it was given to a discarded mistress rather than a deserted wife, she deliberately swore, both in *Sharon v. Sharon* and in this case, that the transaction was a return to her of that amount which she had put into the plaintiff's hands some 18 months before for investment; and not only that, but she produced on the trial in the former case, to support her statement, a writing to that effect, purporting to be signed by the plaintiff and witnessed by Nellie Brackett. But when asked, on cross-examination, to produce that paper here, she declined to do so or to answer any question about it. And Nellie Brackett swears that the writing was manufactured by the defendant; that she copied the signature of the plaintiff from one in an autograph album, and that she witnessed it at the defendant's request, upon an understanding that it was only to be used to influence her lawyers, and the defendant afterwards quarreled with her because she would not go on the stand and swear to it. And while it may not be safe to accept any statement on the uncorroborated testimony of this young woman, the innate improbability of the defendant's story, and her refusal to produce the paper, or answer concerning it, is ample corroboration. And in a suit brought by the defendant against the plaintiff in the superior court, in May, 1884, on the agreement given in part payment of this sum of \$7,500 to recover the installments due thereon for October, November, and December, 1883, amounting to \$750, it was found by said court, sitting without a jury, that said writing was given to the defendant on November 7, 1881, "in consideration of past illicit intercourse between them," and also in consideration of a written receipt and promise to the plaintiff by the defendant "to make no further demand upon him, and not further to annoy him in any manner." And while it is possible that, notwithstanding the falsehood of the defendant in this and other respects, the alleged declaration may be genuine, it

must be conceded that neither that fact, nor any circumstance tending to prove the same, can be established by her uncorroborated oath.

Another circumstance strongly contradictory of the defendant's account of this transaction is the fact that nearly a year after the pretended advance, and before its alleged return, she deliberately obtained from the plaintiff a contract to hold 100 shares of Belcher for her, to be paid for on delivery. Now, if the plaintiff then owed the defendant \$7,500, which, according to her account, had also been advanced to him for the very purpose of being invested in stocks, why hold these stocks for payment absolutely? Why not credit her on the contract with the amount due her from the seller, and agree to deliver on payment of the balance of \$2,500? Or, what would be more natural still, why not deliver her stock at once for the amount due her? Nor is this transaction, viewed in any light, the kind of intercourse we might expect between a fond old millionaire and his darling young wife in the fourth moon of their marriage. It follows that on the testimony of the parties, as well as that of the experts, the decided weight of the evidence is against the genuineness of the declaration and letters.

And now let us see what the evidence is, on the face of these documents, as to their genuineness or falsity. Of the many circumstances that might be mentioned under this head, a few of the most striking must suffice. The declaration is written on note-paper instead of legal-cap, although written in an office well supplied with stationery for business purposes. It is written on the first half sheet instead of a whole one. It begins at the top line of the second page instead of the first one, and is finished back on the unruled space at the top of the latter. The signature of the plaintiff is on the top line of the first page, where it might have been written as an autograph or imitation, or even without any purpose; and, considered as a signature to a legal instrument, has the unusual and unmeaning appendage, "Nevada, Aug. 25, 1880;" and this, although that date, and the fact that the alleged signer was of Nevada, was already stated three times in the

body of the writing. It is full of verbose formalisms and useless repetitions, and in structure and verbiage is just what might be expected from a stylish, half-educated woman, and is altogether unlike what might be expected from the dictation of a person of experience, brevity, and directness, such as the plaintiff appears to be. The last four lines are written much closer than the others, and the words contained in them are crowded together, and two of them abbreviated; and even then there was barely room for the matter without trenching on the signature, after omitting certain words and parts thereof—19 in number—which were used in corresponding and foregoing parts of the instrument. Counsel for the plaintiff has called attention to these omissions in his brief, by inserting them in red ink. Substituting italics for the red ink, the omissions appear as follows: “The presence of Almighty God, take Sarah Althea Hill, of the city *and county* of San Francisco, *state* of California, to be my lawful and wedded wife, *and* do here acknowledge *and declare* myself to be the husband of Sarah Althea Hill, *of the city and county of San Francisco, state of California.*” Taking common experience and observation in such matters as a guide, the most satisfactory inference from the facts on the face of the declaration is that the body of it was written after and over the signature. I know it was said on the argument, and there is force in the suggestion, that if the instrument was premeditatedly written over a signature, either genuine or false, in a matter of so much moment as this, the writer would most likely have experimented with the subject until the matter was got into such form and number of words as would conveniently fill the space preceding the signature, without stretching, crowding, or omission. But the conclusion already stated, that the signature was written before the declaration, is by far the most reasonable inference from the evidence afforded by the document itself; and this cannot be overcome or made doubtful by mere plausible conjecture as to what a prudent and skillful person would or might have done under the circumstances; for this is not the first time in which persons engaged in an illegal or criminal transaction have

strangely or foolishly, as it appears to others after the fact, omitted to take some very simple precaution to prevent detection or failure.

The "Dear Wife" letters have nothing wifely about them except the word "wife" in the address. The four in pencil are short, curt scrawls, announcing the sending of money, presumably on account of her monthly stipend of \$500, with a jocular remark or familiar expression added, such as a guardian might write to his ward, or an attorney to his client. They are dated in different months, and apparently relate to monthly payments. The one of April 1st says, "I send you the 'balance,' two hundred and fifty dollars;" and the one of May 5th says, "You have had at different times [mentioning them] two hundred and forty dollars; the 'balance' is two hundred and sixty dollars, which find inclosed." The "balance" of what? Why the "balance" of the \$500 a month the plaintiff was paying her on some account. There is not a particle of love or affection in the letters; not even enough to suggest that she was his mistress. The ink letter is longer and more formal. It was written in reply to one from her soon after she took up her residence in the Grand, in which she had evidently complained that the plaintiff's manager, Mr. Thorn, had not treated her properly. So far as this complaint was well founded, it probably arose from the fact that the manager suspected she was more than a boarder and less than a wife. But there is nothing wifely in this letter either except the word "wife" in the address. The writer hopes that the inclosed letter to Mr. Thorn will command the "kind courtesy," not respect, she deserves, and the letter to Thorn is to the same effect. There is not a particle of love or affection in it from one end to the other. It is such a letter as the plaintiff might have written to Miss Hill, but hardly to his young bride of less than two months' existence. And there are some particular circumstances connected with this ink letter which prove it to be a tracing beyond a doubt.

The plaintiff swears that he wrote the original of the ink letter at the same time that he wrote the inclosed one to Thorn, at the agency of the Bank of California, in Virginia,

and on its paper. The one to Thorn, which passed through the hands of the defendant, shows on its face that it was so written. The two letters were practically one transaction with one person, and were inclosed in one envelope to the defendant. Under these circumstances the only reasonable conclusion is that they were both written on the same kind of paper. But it was a difficult and tedious task to trace the lithographic head on this paper, nor is it likely that it was obtainable here. So the tracing was made on plain paper, and on its face betrays its fraudulent origin, and furnishes another striking instance of the truth of the proverb, "murder will out." The photographic copies of the declaration and letters indicate that the originals are worn and soiled, and the witnesses who have seen them say that such is their appearance. But this appearance has been put upon them to give color to the assertion that they are originals of some years' existence, which have been carried about and seen hard usage, and particularly were not fresh tracings on new paper. Nellie Brackett swears that the soiling and crumpling process was a part of their manufacture; that the defendant wet them with coffee grounds, and ironed them, and held them over the gas, and the like, to give the new smooth paper the appearance of age and use. Ah Sam, the defendant's Chinese servant, at Laurel place, gives a very graphic account of the process. He says he lived with her "two Christmases ago," and saw her with papers in the kitchen, which she put dirt and coffee on to make them look old and yellow, and that he ironed them for her.

The defendant's answer to this evidence is that she buried the documents for safety in a tin can in the cellar, where, strange to say, they got wet, but whether from the sprinkling of the street or a shower does not appear, and she afterwards ironed them to dry and smooth them. But this does not account for the corners of some of them, and particularly the upper ones of the ink letter, having the appearance of being burned off, as though they had got singed in the gas. And the story indicates that she then had a great deal more concern for the safety of her "papers" than when she left them

in a loose roll on the wall behind a picture at Martha Wilson's; and, taken altogether, it is evidently a weak invention of the defendant's in support of what she knows to be false and forged writings. And thus one falsehood begets another from the beginning to the end of this case.

When compared with the usual and ordinary conduct of married men and women under like circumstances, there is such incongruity and want of harmony between the "Dear Wife" address of these letters, and the general tone and subject-matter of them, that they must be, as the plaintiff insists, and the evidence already considered is sufficient to show, at least in one instance, the tracings of a genuine letter, with the word "wife" substituted for "Miss Hill" or "Allie," and in the others genuine letters in which a like substitution has been made.

But the defendant relies largely, in support of her case, on what may be called contemporaneous evidence of the existence of these documents, and her own declarations concerning the same, and her relation with the plaintiff, to third persons, in the nature of *res gestæ*. For instance, she testifies that she told her uncle, Mr. W. R. Sloan, while she was still at the Grand, that she was secretly married to the plaintiff, because he suspected something wrong, and threatened "to break every bone in Sharon's body;" and that she subsequently showed him the declaration and letters at Martha Wilson's house, soon after she left the Grand; that she did not tell her brother, or aunt, Mrs. W. J. Bryan, but did tell her grandmother, Mrs. W. J. Brawley, of the marriage, but at what time does not appear. She also testifies that she told Mary E. Pleasant of the marriage while at the Grand, and, soon after she left that place, showed her the declaration and letters; that she also showed the declaration to Martha Wilson, and read it to her on October 14, 1880, and that Vesta Snow was present, and read it at the same time, to whom she also showed the letters after she left the Grand; and that she showed both declaration and letters to Nellie Brackett early in 1882.

Nellie Brackett first met the defendant in the early part of 1882. She was then about 17 years of age, and the defend-

ant made a sort of a confidant and dependent companion of her. In August, 1882, the defendant went to live at Mrs. Brackett's, where she remained until the middle of November, when she moved elsewhere, taking Nellie with her, against the wishes of her parents, and keeping her so until near the close of the year 1883, when the quarrel took place on account of the latter's refusal to swear to the forged receipt, as already stated. On the trial of *Sharon v. Sharon* she was called as a witness by the defendant, and testified that she had seen the declaration and letters as early as March, 1882; but, on being recalled by the plaintiff, she said her former testimony was false in that respect; and she testifies in this case that she never saw the Sharon letters until June or July, 1883, and there was then no one of them addressed to the plaintiff as "wife," and she did not see the declaration until some time after that. The defendant testifies that in the summer of 1882 she renewed her friendly relations with the plaintiff, and visited him occasionally at his rooms at the Palace, and that one of these visits she took Nellie with her and secreted her at night behind the bureau in the plaintiff's room, so that she could see him and her go to bed together, and hear what they said and did while there, with a view of having her testify to the same, if need be—particularly anything that indicated they were married—as she was afraid the defendant might deny the declaration. Nellie Brackett now testifies that this story is wholly false; that the defendant concocted it in the fall of 1883, and had her learn it by heart, and go on the stand in *Sharon v. Sharon* and swear to it. For the honor of her sex, I trust she tells the truth about it now; for I would much quicker and rather believe that the defendant was wicked enough to commit perjury than that she or any other woman was vile enough to do such a dirty thing with this young girl.

Martha Wilson is a poor, nervous little negro woman, born a slave, who can neither read nor write. While the defendant was at the Grand she employed her occasionally as a seamstress, and had breakfasts from her restaurant. The defendant made much of her, and sought refuge in her house

when she was expelled from the Grand, and was there off and on for some time. On the trial of *Sharon v. Sharon* she swore, when called by the defendant, that the declaration was shown and read to her by the defendant and Vesta Snow at her house on Mary street, on October 14, 1880, when the defendant called for her to go with her to the furniture factory to obtain some special articles for her rooms at the Grand, on the written order of the plaintiff of that date; and the testimony of the defendant and Vesta Snow is to the same effect in this case. But Martha Wilson, being recalled by the plaintiff in *Sharon v. Sharon*, testified that she never saw or heard anything of the kind until late in the fall of 1883, when the defendant showed her the declaration, and induced her to swear to this falsehood out of sympathy and a promise of \$5,000, and that she took Vesta Snow, who was in her employ at the time, to the defendant, where she was also shown the declaration, and induced to swear to this story. On her cross-examination, when recalled in *Sharon v. Sharon*, she contradicted herself badly, and evidently was made to say what she did not intend, and what was not true. But here she tells a lucid, plain story, and explains that on that cross-examination she was so stormed and raved at by Mr. Tyler that she did not know what she was saying.

But it has been shown beyond a doubt that the key-note of this story, the meeting of the parties at Martha Wilson's house, on the date of the furniture order, is totally false. Vesta Snow says she went to Martha Wilson's house that day, October 14, at the request of Martha's husband, to ask her to come to the restaurant then kept by her at 644 Mission street; and she remembers the one circumstance by the other, and that Martha Wilson had a restaurant at that place on that day, and so says the defendant. But the landlord and the mechanics, who furnished and fitted up the restaurant, swear, and produce their books of original entry to support their statements, that Martha Wilson did not occupy the place until some time in November, and probably as late as the 10th. And soon after the trial of *Sharon v. Sharon*, Martha Wilson was indicted in the state court for perjury in denying that

she had seen or heard read the declaration as stated by the defendant. Upon this indictment she has since been tried, both the defendant and Vesta Snow being witnesses against her, and found not guilty.

Vesta Snow is a woman of doubtful repute, who has worked for Martha Wilson, and appears to be keeping a cheap lodging-house. She testifies in this case, as in *Sharon v. Sharon*, that she saw and read the declaration at Martha Wilson's house, on October 14, 1880; and also that soon after the defendant left the Grand she went one day to San Jose, and that while she was gone she (Vesta Snow) went to Martha Wilson's, and they took a bundle of the defendant's papers from behind a picture on the wall, and she looked over them, and read them "some," and the declaration, and sundry "Dear Wife" letters signed "Sharon," and a furniture order of October 14, 1880, were among them. Now, one item of this statement is undoubtedly false. The defendant obtained the furniture on the order of October 14, 1880, and delivered it to the person in charge, and did not have it in 1881. Mr. Cushman, her witness, swears that he was then in the plaintiff's employ at the factory, and received the order, which, by accident, was not placed among the factory papers, but kept by him, and that the defendant never saw it again until October 13, 1883. And the rest of the story is too absurd and unreasonable for any credence. For who can believe that the defendant, smarting under her recent expulsion from the Grand, would leave papers of so much importance to her as this declaration and these letters in a loose package behind a picture on the wall, at Martha Wilson's, for Vesta Snow and other busybodies to pry into and meddle with, while she was gone to San Jose? And yet the defendant does not hesitate to back her witness, and swear she left the papers behind the picture, as Vesta Snow states, and adds that when she came back she met her uncle there, and took him into the dining-room and showed him the documents. So, then, this kind of contemporaneous evidence is reduced to Vesta Snow, who

appears unworthy of credit, and Mary E. Pleasant, of whom more hereafter.

But why are not her relatives called, to whom she says she disclosed the fact of her marriage to the plaintiff, and particularly her uncle, to whom she says she made the disclosure while she was at the Grand, and to whom she says she showed the declaration at Martha Wilson's soon after she left there? What more probable than, if she could get the testimony of persons like these to verify her claim and corroborate her statements, she would not be leaning on such broken reeds as Snow and Pleasant? Counsel for the defendant, when pressed on this point during the argument, replied that it was not competent for the defendant to prove her own declarations in support of the writing or the marriage; but if the plaintiff wanted to contradict her in this respect, he could have called those persons for that purpose. But it was time enough to discuss the question of competency when the objection was made by the plaintiff. If the defendant really believed that she could prove these acts and declarations of hers by these relatives, she would have called them, of course. It may be admitted that the competency of the proof was in part open to argument; but that would not have prevented her from offering it, at least, especially as she did introduce testimony of the same kind. If the declarations as to the marriage or the existence of the declaration were made during her residence at the Grand, they were, in my judgment, admissible as a part of the *res gestæ*, (1 Whart. Ev. §§ 258, 259; 2 Greenl. Ev. § 462; 1 Bish. Mar. & Div. §§ 438, 540); but certainly it was competent to call her uncle to prove that he had seen the declaration of marriage and "Dear Wife" letters at Martha Wilson's house just after the defendant left the Grand. These relatives are admitted on all hands to be respectable people, and it is a very suspicious circumstance that not one of them, not even the brother, is called or appears to support the defendant in any way. Her omission to call them to corroborate her statements is an admission that

they would not do so because they could not. It is true that the plaintiff might have called them in rebuttal to contradict the defendant; but as she in effect admitted, by not calling them, that they would not corroborate her, that was sufficient for his purpose, and he might well refrain from needlessly bringing them into painful prominence in this unpleasant and unsavory affair.

Mary E. Pleasant, better known as Mammie Pleasant, is a conspicuous and important figure in this affair, without whom it would probably never have been brought before the public. She appears to be a shrewd old negress of considerable means, who has lived in San Francisco many years, and is engaged in furnishing and fitting up houses and rooms, and caring for women and girls who need a mammie or a manager, as the case may be. The defendant states that she became acquainted with this witness early in 1881, and soon after told her of her marriage, and showed her the documents; that from the time she had the trouble with the plaintiff she put herself under her direction and control, and by her advice suppressed all allusion to herself as the wife of the plaintiff in the letters she wrote him after she had been ordered from the hotel; and, as an excuse for this extraordinary abnegation of herself and affairs in favor of this old woman, she swears:

"Mammie Pleasant was old, and had the experience, and she had the experience of lots of *girls and women*—had the experience of the world; and being a servant, and being a wife, and being the head of families, I took her advice and wrote just about what she would dictate. * * * I was much of a baby."

Mammie Pleasant has taken charge of this case from the beginning, and, to use her own phrase, is making the defendant's "fight," whom she supports, and to whom she was forced to admit, after much evasion, she has advanced more than \$5,000, and how much more she would not tell. In my judgment, this case, and the forgeries and perjuries committed in its support, have their origin largely in the brain of this scheming, trafficking, crafty old woman. She states that as early as 1881 the defendant wanted her to

furnish her house at a cost of \$5,000 or \$6,000 on the strength of her relations with the plaintiff. But it seems that Mammie was not certain that the plaintiff could be held liable for the expense, and so she called on her counsel, Mr. Tyler, and stated the case to him, without, as she is careful to say, mentioning any names; but said that the man owned two hotels, and was living in one of them, and the woman in the other, which, under the circumstances, is equivalent to saying "the party of the other part" is William Sharon. After due deliberation, Mr. Tyler gave her a written opinion, which she says cannot now be found, to the effect that such a contract as she mentioned and he suggested was a lawful marriage, under the Code, and the supposed man who owned two hotels (the Palace and the Grand) would be legally liable for the expense of furnishing his "Code" or "contract" wife with a suitable residence, although he was then maintaining her at a cost of \$500 a month at the Grand. Mr. Tyler admits that in the fall of 1881, or the spring of 1882, he was consulted by the witness, as she states, and that he gave her a written opinion to the effect that the man would be liable; but I am quite certain that, if the real date of this conversation is ever satisfactorily ascertained, it will be seen that it took place in 1883. But however this may be, defendant and the witness being thus instructed or informed as to what constituted a valid contract or declaration of marriage under the Code, in due time, and by means best known to themselves, produced this document, which as a legal composition is worthy of its origin, and which, in the language of the senior counsel for the defendant, is beneath the learning and skill of a "jack-legged lawyer."

On the other hand, a number of apparently respectable witnesses testify to declarations and conversations of the defendant during her residence at the Grand and afterwards, that are utterly irreconcilable with the idea that when they were made she had any idea she was the wife of the plaintiff.

Mrs. Mary H. Brackett, the mother of Nellie, says the

defendant lodged at her house from early in August to late in November of 1882, and that shortly before she left she told her that she had been engaged to the plaintiff, but it was broken off. Her brother, she said, was opposed to the match, because Sharon's "pedigree was inferior to hers." She also said he was a shriveled-up old man, anyhow, whom no one would marry but for his money.

Mrs. Sarah Millett, formerly Sarah Orr, was for a long time seamstress at the Grand. Her room was near the defendant's, and they appear to have been quite intimate. She swears that while the defendant was living at the hotel she told her the plaintiff was her beau, and that just before he left for Washington, in January, 1881, he wanted her to go with him and be married privately, which she declined to do, and was since sorry for it; and this she said many times, including the last night when she was in the hotel, when the witness was lying on the bed with her. In the spring of 1882 this witness called to see the defendant on Ellis street, when the latter begged her to bring herself and Sharon together again, promising, if he married her, to give the witness a house and lot.

Mrs. Sarah Morgan heard the defendant say at Mrs. Hardenberg's lunch table at Oakland, in August, 1881, that her engagement with Sharon was broken off, and that she was going east and may be to Europe; and that in 1880, and after August 25, she told the witness that she was "engaged to be married to Senator Sharon."

Mrs. Harriet Kenyon was with the defendant as maid, except for one week, from September 11 to the latter part of November, 1881. The facts stated in her testimony are altogether incompatible with the idea that the defendant was, or even wanted to be, the plaintiff's wife, but rather that the old love for the lawyer was on again, whom she visited slyly, and dined with at the Verein club, and came home speaking of him as, "———, sweetie, how I love you!"

Mrs. Nellie Bacon knew the defendant slightly when she first lived at the Baldwin. In the fall of 1880 she went to

the Grand to board, where she remained until April, 1881. She says that during this time she saw the defendant daily, and she said the plaintiff was paying her attention, and might propose to her; that a proposal from him involved "many delightful things, and one not so delightful—his advanced age;" but that she preferred the lawyer to any of her lovers. In January, 1881, when the plaintiff went to Washington, the witness, at the request of the defendant, draughted a letter for her to the plaintiff, designed to make him propose or compromise himself, which she copied and sent to him; but soon after the plaintiff returned from Washington she said she had trouble with him, and was afraid he would never marry her.

It is true that the defendant denies all these statements, and speaks contemptuously of the people who make them as persons beneath her notice. But they appear to have been her associates, even in her better days, and there is not a circumstance in the case that makes against the integrity and character of either of them. Besides, it won't do to sneer at these people while she consorts with Vesta Snow and Mammie Pleasant. Add to this, her credit is so badly damaged that her unsupported statement is not sufficient to overcome, or even seriously impair, the effect of positive testimony from unimpeached and, so far as appears, unimpeachable witnesses.

And, lastly, let us consider how the existence of these documents, and the claim of the defendant that she is the wife of the plaintiff since August 25, 1880, comport or correspond with the situation of the parties at the time, and their daily walk and conversation since. In August, 1880, the plaintiff was in the decline of life, in the possession of a very large fortune, with a family of grown-up children, to whom he was much attached. As was said in *Holmes v. Holmes*, 1 Sawy. 119, in speaking of a person somewhat similarly situated: "With him the primary object of marriage, the procreation of children, had been long accomplished; and the secondary one, the avoidance of fornication,

does not appear to have much concerned him." The defendant was a mature young woman, of rather prepossessing appearance and tolerable attainments, with some years' experience in hotel life and stock speculations. During the past eight or ten years she had lived in comparative luxury and ease on money derived from her family. But early in 1880 she found herself without means, and the losing party in a protracted game of hearts, for which she sought, but without effect—

"To give repentance to her lover,
And wring his bosom"—

by committing suicide in his presence.

In this desperate condition she met the plaintiff, an unmarried man, with the reputation of a Giovanni, and, without any formal introduction, accepted an invitation to his private office to "talk stocks," which soon ended, as she must have expected, if not desired, in talking about herself. If this interview had ever taken place, as the defendant relates it, it was much more likely, under the circumstances, to have ended in an arrangement by which the plaintiff would pay her \$500 a month to be his convenient friend, than that he should then and there make her his wife, and admit her to an unqualified marital right and interest in his immense fortune. Taking the defendant's account of the transaction, the pages of fiction furnish no parallel to the singular and unnatural conduct of these parties. There was no preliminary courtship, but barely an acquaintance between them. They came together fortuitously in the stock operations of California street, and their personal intercourse began with a proposition from the one that the other should be his mistress, which she declined, apparently without being offended, when he, unable to control his sudden passion, offered her marriage, which she readily accepted. After a few words of parley as to the *modus operandi*, she agreed to a secret marriage, to be evidenced by a writing under the Code, executed by the parties, but unattested by witnesses. Thereupon the defendant, at the suggestion and dictation

of the plaintiff, wrote at one sitting, *currente calamo*, this unique declaration, without altering or correcting a word or phrase therein, to which the latter then signed his name, adding, I suppose, by way of emphasis, the words, "Nevada, Aug. 25, 1880." And then, without more ado, without even a parting kiss or fond embrace, they went their several ways as if nothing more had happened than a deal in Belcher; not knowing, and apparently not caring, whether they should ever meet again. This ardent lover, whose fervent affection led him to back the offer of his plethoric purse with his widowed hand, turned his back on the lovely and consenting Althea to give his heart and soul to the study and control of Nevada mines and politics, while she, in the pathetic language of counsel, remained "an ungathered rose."

They separated without any arrangement for the future, and no communication passed between them for weeks thereafter; and none appears to have taken place until about the date of the letter to her at the Baldwin, which reads more like a solicitation for an assignation than a communication from a husband to a wife. During this time the Galindo Hotel burned down, and she was compelled to seek new lodgings, and went back to the Baldwin. She admits that she never informed her alleged husband of the occurrence or her whereabouts, and when asked to explain this singular conduct, she could do no better than give this frivolous and flippant answer, which carries its refutation on its face.

"I knew when he came down (from Nevada) if he wanted to see me, he could find me. I don't think it necessary for wives to run after their husbands. I didn't take the trouble to notify him where I had gone to. I thought, if he cared so much for me as he pretended to, he would find me. I am not in the habit of running after people."

The defendant's idea of what a wife would or should do, under such circumstances, is evidently not founded on experience, and, judging from her conduct and the explanation of the same, it is evident that she has yet to feel the tender solicitude that a true woman has for one to whom she

has given her heart and hand in holy wedlock. And, now, could anything be more unnatural and improbable than this? There is no escape from the conclusion—the conduct of the parties was contrary to human nature and common experience, and makes the story of the marriage utterly incredible, even if it was not contradicted by the oath of the plaintiff.

But the conduct of the parties, after they found one another, also contradicts and is altogether irreconcilable with her claim of marriage, and stamps with the mark of falsehood and forgery the declaration and letters relied on to support it. It is apparent that the defendant went to the Grand to live in pursuance of some arrangement with the plaintiff soon after the letter to her of September 25, 1880. This is plainly indicated by the contents of the letter to her from Virginia, inclosing the one to Thorn, and of that also. But during her 15 months' residence there, the parties, so far as appears, never addressed or spoke of one another, in public or private, orally or in writing, as husband and wife, or said anything that implied such relation. Nor does it appear that any such claim was ever made or admitted by either of them, under any circumstances. The intercourse between the parties, so far as is known, or may be inferred from the evidence, was of a familiar and somewhat commonplace character, but utterly wanting in the tender consideration and respect usual and proper between husband and wife in their station of life.

The character of his letters to her has already been commented on. They are very brief, and either relate to the payment of her allowance, or contain an invitation to dinner, which plainly implies that she was not in the habit of sitting at his table or expected there, unless specially invited. They are utterly void of affection, and altogether lacking in mention or even allusion to the numberless and nameless little incidents and affairs peculiar to every married couple, and which, taken together, constitute the charm as well as the staple of married life; and, although Christmas and New Year passed, and a birthday came to her while there, it does

not appear that she ever received a present, greeting, or other token of affection from the plaintiff.

But there are convincing proofs in the conduct of the parties, other than these general and negative ones, against this claim of marriage. Take the circumstance of concealing herself in the plaintiff's rooms, and watching him and another undress and go to bed together, and the indifferent and indecent levity with which she carried the story to the seamstress. Waiving the moral insensibility which such conduct implies, it is inconceivable that a wife could witness such a scene without some manifestation of anguish, if not anger, and, what is worse, that she could regard it as a good joke, and gleefully relate it as such to others. Speaking of the affair, she says, "I laughed at it, and told it to a good many people. It was a very amusing affair to me." Afterwards, when she came to sign her deposition, and had had time to reflect, and perhaps receive a suggestion, she seems to have realized the damaging nature of her admission, and said that, although she laughed at the affair, she was "angry" too. But whether she was "amused" or "angry," or whether she laughed simply or with a laughter akin to tears, she did not act like a wife.

Towards the close of the year 1881 the plaintiff had evidently gotten tired of the defendant, or distrusted her, and probably both. Moved by these considerations he had a settlement with her, in which he gave her \$7,500, as already stated, for which she gave him a receipt in full of all demands, soon after which he had her summarily, and against her abject petition and remonstrance, expelled from the hotel. Now, if the plaintiff was married to this woman, and knew she had the written evidence in her possession of that fact, it is not reasonable or probable that he would have gone to such extremity with her; and, although it may be claimed that he acted on the supposition that she had lost the declaration, and she swears she told him so, for the purpose of preventing him from getting it away from her, he must have known that, if she had letters of his addressed

to her as "Dear Wife," they were as good weapons in her hands as the declaration itself. However, it is sufficient to say that his conduct on this occasion was anything but that of a husband. In fact, he never, so far as appears, treated her otherwise than as a plaything or fancy for which he was paying as he went, and expected to as long as it suited him.

But the conduct of the defendant on this occasion is enough, in my judgment, to settle this question against her, even if the plaintiff was silent on the subject. When she was ordered to leave the hotel, she wrote the plaintiff three letters in quick succession, beseeching him by every consideration that occurred to her to allow her to remain on the old footing under his roof. If at the time she believed herself to be his wife, it is impossible that she should have written these abject appeals to the plaintiff, every word and syllable of which read like the wail of a poor, discarded friend or mistress, and not the confident and certain reply of an outraged wife, conscious of her rights and her power to assert them. It is not necessary, and space will not permit, to call attention to these letters in detail. They are contemporaneous conduct of the defendant, at the most important crisis in her relations with the plaintiff, and their purport cannot be misunderstood. The mere perusal of them is enough to convince any one that they were not written by a wife to her husband. These honored terms do not even appear in them. In her direct distress she dare not address him as husband, or call herself his wife. The highest ground on which she bases her appeal for mercy is "friendship,"—an indefinite term which might well be used to characterize the relation between any unmarried man and woman. She asks the question, would you "stoop to injure a *girl*, and one whom you have pretended to love?" And again she says: "Don't do things now that will make *talk*." What "talk" is she afraid of but "talk" about their doubtful or illicit relations? Further on she urges her claim in language that cannot be misunderstood for that of a wife:

"Mr. Sharon, you have been kind to me. I have said I hoped my

God would forsake me when I ceased to show my gratitude." "I had hoped to always have your friendship and good-will throughout life, and always have your good advice to guide me." "I valued your friendship more than all the world. Have I not given up everything and everybody for it?" "I have always been kind to you, and tried to do whatever I could to please you, and I hope at least, in your unjust anger, you will let us *apparently part friends*, and don't do or say anything that could create or make any *gossip*."

"Gossip" about what? That the defendant was the plaintiff's wife, and they had been secretly married. Was that what she was afraid of? No, not at all; but rather that she was his leman, and had misbehaved herself and been discharged. The plaintiff took no notice of her wail, and she was compelled to go. But she was not without hope that they might be friends again, and in the summer of 1882 she appears to have been in the habit of calling on him at the Palace, but her calls were never returned; and in August of that year she wrote the plaintiff the remarkable letter known as the "Us Girls" or "Egg and Champagne" letter. It is given above in full, and speaks for itself. How any one can have the hardihood to claim that it was written by a wife—and a deeply injured one—to a cruel and unfaithful husband, is more than I can understand. It is apparently the work of an artful woman who is anxious to get her net over the head of a wayward old millionaire again, and recall him to her side once more—not so much for love as moonlight drives, visits to the springs, lovely days in the country, egg in champagne, and the like; and, distrusting the power of her own familiar charms and honeyed phrases, she adroitly contrives to put young "Nell" in the foreground, as a fresh lure to the wary old bird.

Sometime after this the defendant took Nellie Brackett with her to the Palace, and the plaintiff had them both put out of the hotel; whereupon the letter signed Miss Brackett, and known as the "Old Sharon" letter, was written and sent to the plaintiff. The defendant says the letter was written by Nellie Brackett, but that she knew of it and approved it; but I think there is no doubt but that she dictated it, or wrote it herself, and had Nellie copy it. But that is not

very material to my present purpose. Certainly the writer of this letter never dreamed that the defendant was the wife of the man she was berating; and if Nellie wrote it, it is another cogent circumstance to show that she did not know of the alleged marriage, or the existence of the disputed documents, and that the defendant's statement, that she had before then told her of the one and showed her the other, is untrue; and to this effect is Nellie Brackett's testimony. But if it was written or dictated by the defendant, it is only another link in the long chain of independent and indisputable circumstances contradictory of the defendant's claim and testimony. The writer speaks of the defendant as "a motherless, fatherless *girl*, * * * alone in the world," and leaves no room for even an implication that she ever thought of her as the wife of any one. The style and matter indicate that the defendant can be fierce and abusive as well as wheedling and fond; but she had no thought then that the person she addressed as "you horrible, horrible man" was her own dear husband.

The character and contents of these five letters of the defendant are too damaging to her claim to be passed over in silence. They could not be directly denied, but a weak attempt has been made to palliate them. The defendant first took refuge in the secrecy clause of the declaration, which bound her not to make its contents "public" for two years, although it is probable that the last two of these letters were written after that period had expired. She said she was advised that if she did not keep that promise the marriage would become void, or the plaintiff would make her trouble, and therefore she did not feel at liberty to address him, even privately, as his wife or her husband, even when he was driving her from his presence and protection. It is not likely that any lawyer ever gave her any such absurd advice, and, as she has failed to call the adviser to corroborate her statement, that story may be dismissed. However, on being confronted with some imaginary conversations she says she had with the plaintiff during this period, in which she told him

to his teeth that she was his wife and meant to have her rights as such, she fell back on her good genius, Mammie Pleasant. She says she wrote the letters and wanted to do so as the plaintiff's wife, but this wise old manager would not let her write a word to the plaintiff indicating that she was her wife, for fear it would "rile" him and make trouble. This is a very flimsy story, and altogether unworthy of credit. To one who has seen and heard the defendant in court, and has read the report of her examination before the examiner, the idea that old Mammie Pleasant, or any one else, could control her tongue or pen in her intercourse with the plaintiff is simply ridiculous. Neither is it reasonable that she, or any one else, would regard it as a violation of the secrecy clause in the declaration for her to address the plaintiff in private as his wife, and to insist on being treated accordingly. She did, according to her own statement, tell a number of persons before this of the marriage, and she says she did not think that was making it "public." Then, how could she imagine she was not at liberty to speak of the matter in private to "the party of the other part"?

But the inconsistency of her conduct, compared with her claim, does not stop here. For more than a year after the expiration of the secrecy clause she made no sign or pretense of being the plaintiff's wife. During this time the plaintiff paid her no attention, but treated her as a person he was well rid of. Her financial resources were daily diminishing as she neared the end of the provision made for her by the plaintiff in the fall of 1881. There was no longer any reason why she should not openly address the plaintiff as his wife, and demand recognition and support from him accordingly. Not only this, but she had every reason now to exhibit her documents to her brother and other relatives, and at least claim their countenance and advice. But, instead of this, she gave herself and her cause into the keeping of an old woman, who appears to be no better than a go-between, and one William Neilson, of whom the counsel for the plaintiff said, on the argument, without objection or reply from any one,

as a reason for not having taken his testimony: "It was not thought worth while to tarnish the record with any statement he might make." And through such agencies and advice as Pleasant's and Neilson's, she finally, on September 8, 1883, without a note of warning to or demand on her alleged husband, precipitated her case on the public in a melodramatic and roundabout way, by having the plaintiff arrested for adultery, on the assumption that he was her husband, and soon after publishing the declaration and what purported to be a "Dear Wife" letter. But the original of this letter has never been produced, and the defendant on her examination admitted that she never had one like it. Nellie Brackett swears that it was addressed, "My Dear ———," and that the defendant afterwards spoiled it in trying to substitute the word "Wife" for the dash. Her testimony on this point is substantially as follows:

"After Mr. Sharon's arrest, Neilson said he would publish the letter addressed 'My Dear ———' as 'My Dear Wife.' Miss Hill said she did not like that, because she had no such letter. Neilson said he would see that she had a 'Wife' letter out of that one that had a dash on it. After four or five weeks, he not attending to it, she tried to fix that letter herself and spoiled it."

Her testimony is strongly corroborated by that of the defendant, and squares with the admitted facts and probabilities of the case. But the effect of this circumstance does not stop here. The transaction furnishes another convincing argument against the existence of the "Dear Wife" letters as late as September, 1883; for if the defendant had had the "Dear Wife" letters when Neilson published the admitted spurious one, she would certainly have furnished him one of them for publication.

Neilson's relations with the defendant at that time, and his position in the affair, are not doubtful. He was her agent and adviser, and knew as well as she did that she then had no "Dear Wife" letters. This will appear from the agreement between her and her counsel for the division of the prospective fruits of this predatory litigation. On October 24, 1883, Mr. Tyler made a written agreement with the

defendant, she signing it as "S. A. Hill," for the prosecution of a suit against the plaintiff for the vindication of her good name and a division of the common property, which they subsequently alleged to be of the value of \$10,000,000, for one-half of what he might recover. The agreement contains a clause to the effect that Mr. Tyler will not settle with Sharon without the consent of the defendant "and her agent, William Neilson," who doubtless was an agent with an interest, and well advised in the premises. The only inference to be drawn from these facts is that on September 8, 1883, and until some time afterwards, the "Dear Wife" letters were not in existence. The tracing and alteration had not then been done. The conspiracy had not progressed so far. No credible witness swears to having seen them earlier than September 26; and if any one had, in the light of these facts, it would be considered a mistake. R. P. Clement says he saw them between September 26 and October 10; C. D. Cushman says on October 20; Samuel Soule says on November 23; and W. B. Tyler says in October. Vesta Snow and Mammie Pleasant are the only persons who say they saw them earlier.

I have thus gone over the salient points in this case at some length. Much more might be said on minor points to the same effect. But this, in my judgment, is sufficient to show that, humanly speaking, it is not possible that this declaration of marriage was ever signed by the plaintiff, and that it is morally certain that both it and the "Dear Wife" letters are false; that they were practically forged by the defendant, by writing the declaration over a simulated signature, and by making tracings and alterations of letters from the plaintiff to herself, and substituting in the address thereof the word "Wife" for "Miss Hill" or "Allie," and omitting at the end of the one in ink the words "yours truly;" and that the claim of the defendant to be the wife of the plaintiff is wholly false, and has been put forth by her and her co-conspirators for no other purpose than to despoil the plaintiff of his property. In this undertaking, doubtless, the

proverbial sympathy of the multitude for an attractive young woman, engaged in an affair of this kind with an immoral old millionaire, was largely relied on to make the conspiracy successful. But in a court of justice such considerations have no place. Here, at least, the conduct of the parties must be measured and characterized by the evidence, and have effect according to the law in such cases provided.

A woman who voluntarily submits to live with a millionaire for hire ought not, after she finds herself supplanted or discharged, to be allowed to punish her paramour for the immorality of which she was a part, and may be the cause, by compelling him to recognize her as his wife and endow her of his fortune. If society thinks it expedient to punish men and women for the sin of fornication, let it do so directly. But until so authorized, the courts have no right to assume such function, and, least of all, by aiding one of the parties to an irregular sexual intercourse, to despoil the other, on the improbable pretense that the same was matrimonial and not meretricious.

The question of whether there was a marriage between these parties, assuming the defendant's statement to be true, does not directly arise in this case. This suit is brought to annul the written evidence of the alleged marriage, on the ground of its falsity, and to enjoin the defendant from setting it up or using it to the prejudice or injury of the plaintiff. But, in determining this question, the conduct of the parties during the time it was claimed they were living under this instrument as man and wife has necessarily been examined, and found not to support such claim. And, so far as the element of consent in this alleged marriage depends on this declaration, the conclusion that it is false is equivalent to a determination that there was no marriage between the parties, and that their intercourse was meretricious.

But I cannot refrain from saying, in conclusion, that a community which allows the origin and integrity of the family, the corner-stone of society, to rest on no surer or

better foundation than a union of the sexes, evidenced only by a secret writing, and unaccompanied by any public recognition of each other as husband and wife, or the assumption of marital rights, duties, and obligations except furtive intercourse, more befitting a brothel than otherwise, ought to remove the cross from its banner and symbols, and replace it with the crescent.

The plaintiff is entitled to the relief prayed for; and it is so ordered.

JUDGE SAWYER (after passing on the questions of law): I shall now call attention very generally to some of the salient points developed in the testimony, and state my conclusions on the material issues of fact, but leave the full discussion of the evidence to my associate.

The great issue of fact in the case is whether the complainant signed the alleged written declaration of marriage set out in the bill. As to this issue but two parties testify who profess to know—others probably do know—whether he did or not, and these parties are the complainant and respondent themselves—the apparent parties to the contract. The complainant, in the most positive and unequivocal language, denies that he executed the instrument, or that he ever saw it, or heard of it, or heard of any claim of wifehood by respondent under it, or otherwise, till about the time of his arrest for adultery, on the complaint of one Neilson, acting in concert with respondent, on September 8, 1883—more than three years after its date, and more than a year after the stipulated time for secrecy had expired; and that he never, in his life, saw the instrument until he obtained an inspection of it in November following, under the order of one of the state courts. He also testifies that, according to the best of his judgment, the signature to the contract was not written by him. He is as “positive on the point as human judgment can dictate.” On the other hand, the respondent as positively and unequivocally testifies that complainant did execute the contract; that she wrote it at his dictation, in his presence, and that they both signed it

in the presence of each other. They both testify as to matters in regard to which they, respectively, have actual knowledge, and upon which they cannot possibly be innocently mistaken, and matters which could not well have been forgotten or misreclected. One or the other, therefore, must have knowingly testified to a falsehood. There is no reasonable ground for escaping this conclusion. This being the case, the duty is devolved on the court of determining, so far as it is possible to do so, from all the evidence, and the intrinsic probabilities arising out of the known or undisputed facts, and facts satisfactorily proved, which party has testified to the truth and which to the falsehood.

The complainant is a well-known business man, of more than 30 years' standing, as generally and thoroughly known here as any man in the United States. There is nothing to throw a doubt upon his character for truth and veracity, except as it arises out of the testimony in this case directly or inferentially contradicting his own. Of the respondent we know much less—indeed, little beyond her own account of herself; but as to her, also, there is nothing to impeach her character for truth and veracity beyond the testimony in the case contradictory of the testimony given by herself; the character of her testimony; the unusual and unsatisfactory tone and manner in which it was given; and such intrinsic probabilities and improbabilities as arise out of her testimony and the other testimony introduced. Conceding, then, for the purposes of the case, that the parties, at the outset, stand upon an equal footing as to character for truth and veracity, their naked statements are equally balanced, and we must determine from the other evidence, and the probabilities arising out of it, on which side is the preponderance.

Under the circumstances, the inquiry naturally suggests itself to the mind: To what extent are these parties contradicted or corroborated upon material matters by the direct testimony of other credible witnesses, testifying with regard to the same material facts? Upon examination of the testimony, I do not find that the complainant, Sharon, has

been directly contradicted by other witnesses having positive knowledge of the facts as to any fact material to the case to which he has positively testified; unless upon some points he may be regarded as inferentially contradicted by Mrs. Pleasant, who is as deeply implicated in the conspiracy, if conspiracy there be, as the respondent herself, and, in view of the circumstances disclosed, whose testimony must be taken with a considerable degree of caution. On the other hand, the respondent has been directly contradicted, on many material points, as to her acts performed and declarations made from 1880 to 1883, wholly inconsistent with the idea that at those times she considered herself to be the wife of complainant. Such contradictions in many important matters, which I shall not take time to enumerate, are found in the testimony of Mrs. Bacon, Mrs. Morgan, Mrs. Kenyon, Mrs. Millett and Mrs. Mary Brackett, and as to an important matter, in some aspects of the case—the time of the opening of Martha Wilson's restaurant—by several gentlemen of unimpeachable character, supported by contemporaneous entries in their account-books. Respondent, it is true, now sneers at all these female witnesses, and indulges in very uncomplimentary remarks concerning them; but they were at one time manifestly, from her own testimony, more or less intimate with her, and to a considerable extent enjoyed her confidence and society, and to that extent, by her past conduct and acts before the litigation was entered upon, they have her own indorsement. There is nothing else other than her contradictions, and their association and connection with this case, disclosed in the evidence, to discredit, generally, their testimony. The fact of so many witnesses among her former associates—*ante litem motam*—testifying directly contrary to respondent upon material matters, about which they cannot well be mistaken, tends strongly to impeach her credibility, and is worthy of serious consideration in deciding the great point in issue, thus otherwise left so equally balanced by the testimony of the two parties themselves. Besides, the whole tone and manner of testifying by respondent, and the inherent character of the testimony

given by her, is extremely unsatisfactory. The tendency is not by any means to inspire confidence.

The complainant admits that he has known respondent from August, 1880, and respondent says that she first met complainant in the spring of 1880, but she cannot fix the date; and, between that time and August 25, that she had several interviews with him, but cannot tell how many, one of which was at the Baldwin Hotel, shortly before she went to the Galindo Hotel, at Oakland. The interviews, other than at the Baldwin, were either on the street, near the Bank of California, or at complainant's office, over the Bank of California. She cannot tell whether the interviews were once a month or oftener. As near as it can be made out from her testimony, she did not go to the Galindo until some two or three weeks or more after the incident of taking laudanum at the office of a prominent attorney, which was on May 10, 1880; and she does not know whether any one of the interviews with complainant took place before the happening of that incident. I think, therefore, it may be assumed that the acquaintance commenced, and all the interviews occurred, after May 10, and consequently that there were but very few of them between that date and August 25. As I understand her testimony, she does not positively identify more than two visits to complainant's office, which were had at his suggestion. At one of them she says that he proposed to give her \$1,000 a month and the use of a horse, if she would consent to be his mistress. She so understood the proposition, and declined it, saying he had mistaken her character, and that he could obtain other women to serve in that capacity for a much smaller sum. She says that he then proposed marriage, which she accepted, and came to meet him again, by appointment, on August 25; that she arrived a little late, and found complainant somewhat excited and nervous on that account, as he was going to Virginia City, Nevada, on that afternoon; that he had a table with paper, pens, and ink on it, and directed her to sit down and write as he dictated, which she did, and then wrote, at his dictation, the instrument in

question, signing where he directed; that he had a small book in his hand at the time, which he consulted, and seemed to dictate from it, and a number of large books that looked like ordinary law books, from which he read passages showing that such marriages were lawful, and cases in which they had been sustained, and in which the wife had obtained property as such; that they stopped and talked, discussing matters from time to time as they proceeded; that it was all written at one sitting, and no part rewritten; that they were engaged in it, it might be an hour, an hour and a half, or perhaps two hours; that when it was finished complainant came round beside her, asked her if she was satisfied with it, and signed it, adding the words, "Nevada, Aug. 25, 1880;" that she was surprised at that mode of marriage, and so expressed herself, and said, "That can't be our marriage certificate, senator;" that complainant said that it was all right, and, as he was going away that afternoon, directed her to take it home and copy it all over nicely, and, when he returned, he would sign the new copy for her, and the rough one then signed he would keep for himself; that she then left with the document, and returned to the Galindo Hotel, at Oakland, and she supposes he went to Virginia. At all events, she never saw anything more of him till some time after September 9. This is her account of the courtship and marriage, which is positively denied by complainant. There is no evidence of any kind that she ever made a neat copy for them to execute on complainant's return, as she was directed to do, or that any copy was ever executed for complainant, or that the matter of making the neat copy was ever afterwards alluded to between them. The books alluded to were doubtless intended to be the pocket edition of the California Civil Code and some volumes of reports. But Mr. Dobinson, the private secretary of complainant, and who for years occupied Sharon's rooms in that capacity, and who was perfectly familiar with all furniture and fittings up, testifies that no such books as described were kept in the office; that he would have seen them had they been there; and that he did not see any such

there at that or any other time. They could hardly have been in the office without his knowledge, and this affords a strong presumption that no such books were there, and, to that extent, is in conflict with the respondent's testimony on this point, and supports the testimony of complainant.

I think it must be admitted that there is a strong intrinsic improbability that such an extraordinary contract, upon so short, casual, and exceptional an acquaintance, without consultation with or knowledge of her brother and numerous other relatives and friends, should be clandestinely entered into in such an extraordinary manner, by an honorable and virtuous young lady of 27, so intelligent and shrewd, and so well acquainted with the world, as the respondent has demonstrated herself to be. And it is no less intrinsically improbable that a man of complainant's experience, wealth, and position should enter into so strange a contract, with an honest purpose of honorable marriage, while there was no better reason for departing from the ordinary course of matrimonial alliances than has yet been suggested; and it seems, also, still more improbable that a man of complainant's knowledge of the world and shrewdness would, at his age, place himself in so embarrassing a position—put his wealth and position at such hazard—from the basest of motives, and with a deliberate purpose, so infamous and shocking to the moral sense, of deceiving respondent and accomplishing her ruin. A motive and purpose so infamous ought not to be attributed to a man hitherto holding a respectable position in society—such a position as would lead an intelligent lady of good connections and social position, knowing his standing, to marry him—against his solemn oath to the contrary, except upon testimony reasonably satisfactory to the mind; certainly not upon the unsupported testimony of an unusually intelligent and experienced party, capable of entering into a secret arrangement so extraordinary, upon so slight an acquaintance of exceptional character, without consulting with or the knowledge of her numerous relations and friends, including a brother, who had theretofore been to her all that a brother could be to a

sister, and who were readily accessible, and in habits of daily intercourse with her—that brother, at the time, living in the same house with her, and serving as her protector. Again, according to respondent's own account, this interview and transaction having taken place somewhere from noon and afterwards, on August 25, at its conclusion the parties separated, she going to her residence at the Galindo Hotel, in Oakland, and complainant, as she supposes, to Virginia City, Nevada, leaving by the 3:30 p. m. overland train, the only means at that time of travel between San Francisco and Virginia.

Respondent remained at the Galindo Hotel until it was destroyed by fire, on or about September 9, when she returned to the Baldwin Hotel, in San Francisco, and remained till the latter part of September. The complainant remained in Virginia until some time after the destruction of the Galindo Hotel, in September, and returned to San Francisco between the date of that event and September 25, the date not now being definitely fixed. He called on respondent, she says, at the Baldwin, before September 25, but she cannot say how long before. It was probably but a short time before September 25, for on that day complainant was active and urgent for an interview, he having on that day written her several notes, some of them in evidence—I think four in all—seeking an interview, addressed at the heading, "*My Dear Miss Hill.*" And immediately after that she removed to the Grand Hotel without even consulting with her brother, *who was with her at the Baldwin*, or informing him of her contemplated movement. Upon learning of the change, however, he immediately followed her to the Grand, and for her protection took up his residence at that house, thereby manifesting the deep interest he felt in her welfare. During the whole month, from the date of the alleged marriage contract, August 25, to September 25, there was no communication by word, letter, or telegraph between complainant and respondent, except the single call by complainant at the Baldwin at some time after his return from Virginia City, and before September 25, the date of

which is not fixed. Respondent did not even inform complainant of the burning of her residence, and her consequent removal. She did not intimate to her newly-acquired husband where she could be found on his return from Virginia City, and he was compelled to send his Chinese servant to Oakland and elsewhere to learn of her whereabouts; so that it is probable that the meeting at the Baldwin was not very long prior to September 25, when complainant became so active and urgent for an interview. Thus a month or nearly so intervened between the entering into this extraordinary marriage contract and any further communication, or effort to communicate, between them. It does not appear that prior to complainant's return from Virginia City there had been any consummation of the marriage by marital intercourse.

The respondent, according to her own account, did not take sufficient interest in her newly-acquired husband to communicate with him, or to inform him of her misfortune in being burned out, and compelled to remove, and where he could find her on his return; and gave as a reason for her neglect that she did not conceive it necessary for wives to run after their husbands, and that she supposed he would find her, if he wanted to, on his return from Virginia City. There was a daily mail, and at all times telegraphic communication, between San Francisco and Oakland and Virginia City, and yet nothing passed between these newly-married parties during nearly or quite the whole month usually designated as the "honeymoon," and under circumstances wherein we should certainly expect some written or other communication. These first *private* notes of the complainant after the alleged marriage were addressed, in the heading, "My Dear Miss Hill," and only intimated the desire for an interview for her benefit, saying: "Something I want to tell you about of interest to yourself." There is nothing in the notes breathing the spirit of a husband newly married, or even of half a century's standing. To my mind the conduct attributed to both parties by the respondent, during the month following the alleged marriage

is intrinsically improbable, had there been a marriage contract as claimed. I cannot reconcile such a course of conduct with my observation and experience of the course of human action, and the influence and operations of human affections. It seems incredible. It is, of course, possible that two parties can be so constituted that they could make such a contract, and conduct themselves under the circumstances and in the manner indicated during the month following marriage; but it is highly improbable, not to say utterly incredible, even when considered by itself, unaffected by other collateral facts; and such improbability is to be considered, and it should receive its due weight in connection with the other facts developed in the case.

We now come to the period from September 25, 1880, to November, 1881, while respondent resided at the Grand Hotel, and while the relations of the parties were most intimate, harmonious, and cordial; and afterwards, from the time of respondent's expulsion from the hotel, in December, 1881, until September 8, 1883, when complainant was arrested on a charge of adultery upon the complaint of Neilson, and at the instigation of respondent, *by means of which publicity was first given* to respondent's claim of wifehood. My associate has fully discussed the evidence and facts relating to this period, and I shall not go into particulars, but only state some facts appearing in the evidence, with a view of drawing the proper inference therefrom.

One distinguishing fact is that the alleged marriage was kept secret, not only during the two years provided for in the contract, but for a year or more afterwards, as it was never made public until the time of complainant's arrest, September 8, 1883. Secrecy is always a badge of suspicion and fraud, and especially so in matters of interest to society, and which public policy and the laws of well-regulated society require to have general publicity. Withholding knowledge of the relations of the parties from the public, and especially from those who have a right to be informed upon the point, and clandestine sexual intercourse, are

strongly indicative of meretricious, and not marital, relations. And to this effect are all the authorities upon the subject. The marriage and intercourse, in this instance, were kept profoundly secret from the public, and, so far as possible, from respondent's brother and other near relatives; and, so far as we know, only revealed, if at all, to a few who, to say the least, in view of the known facts, are of questionable standing, and who occupy an unenviable relation to the case—parties to whom such a revelation was not likely to be made in a case where a contract in good faith required secrecy, and where it was studiously concealed from those having a right to know, and who would be quite as likely to keep a secret, if desirable to do it. Those relatives could, certainly, have had no motive to defeat the election of complainant to the senate after he had become so nearly allied to them by marriage. There has been introduced in evidence a number of letters and brief notes from complainant, addressed to respondent while she lived at the Grand Hotel, from September, 1880, to November, 1881, and during the year when the relations between the parties were the most intimate and cordial—while respondent claims that they were happily, though secretly, cohabiting together as husband and wife. Of all these letters thus introduced, and if any were omitted it must be presumed that respondent would have offered all those favorable to her case, five appear to be addressed "My Dear Wife." These are positively declared by complainant to be forged and spurious, at least so far as the word "wife" is concerned. But, waiving a discussion of that point in this opinion, it having been covered by my associate, not one of these letters, aside from the word "wife," contains a word that suggests the relation of marriage, or breathes the spirit a husband would be expected to manifest in a correspondence, however cursory, casual or unimportant, with his wife. That word is singularly inconsistent with the tone and matter of the rest of these letters.

No satisfactorily authenticated word or act on the part of complainant, indicating the relation of husband and wife,

or inconsistent with meretricious relations, during the whole three years from August 25, 1880, to September 8, 1883, appears in the evidence, or supported by any direct evidence, other than that of the respondent herself. On the contrary, the letters all breathe a different spirit—sometimes jocose, sometimes all business, and all, except the so-called “Dear Wife” letters, are addressed “My Dear Miss Hill,” “My Dear Allie,” or “My Dear A.” The letters of earliest date—those written in the ardor of the waning honeymoon—only rise to the pitch of “My Dear Miss Hill.” But these letters are fully discussed by my associate. I only refer to them for the purpose of drawing an inference. There does not appear to be any good reason why on one day complainant should address his wife “My Dear Miss Hill,” and on another day, “My Dear Wife;” or why, in their secret correspondence, intended for no other eyes, a husband should not always recognize his wife as wife. If he could trust her with *some such letters, and with the keeping of the marriage contract, why not with more?* But during all this period these parties were dealing with each other in money matters, even in small amounts, *at arms-length*. As early as December 5, 1880, but little over two months after going to the Grand, there was a stock transaction, wherein respondent drew a memorandum, which complainant signed, acknowledging that he held 100 shares of Belcher for “*Miss Hill, at \$2.00 per share, to be paid for on delivery of the stock.*”^a This was a private transaction between them, unknown to anybody, and *requiring no mask*. Why this particularity and care in carrying on and concealing under false names a business transaction between husband and wife? So, also, several of the notes from complainant to

^a In the transcript of the short-hand notes of testimony reported by the master the price appears \$200, there being no point between the 2 and the ciphers. This must be an inadvertent omission, for it is a matter of public history and notoriety that, at that date, the value of Belcher stock was, in fact, only about two dollars per share, as a reference to the official records of the San Francisco Stock and Exchange Board, and the daily published reports of sales, will show. But I take the price as I find it in the record. S.

respondent, introduced in evidence, relate to moneys and accounts between the parties, which were nicely calculated and balanced to a cent, on the apparent basis of \$500 per month, the amount which respondent testifies her husband was paying her. This was not merely pin-money, but funds out of which the wife of a man alleged by respondent to be worth many millions of dollars, with an income of from \$30,000 to \$100,000 per month, was to pay all her expenses, hotel bills, clothing, everything, and out of which she says she also purchased many articles of apparel for her husband, and the account regularly balanced and settled, as though they were dealings between utter strangers.

Yet respondent was offered, according to her own testimony, double the amount to take the position of mistress, she being regarded as twice as valuable in that capacity as in the capacity of wife. So, on November 7, 1881, the complainant paid the respondent \$7,500 in cash, and notes payable to the order of "*Miss Hill*," the balance of which has been recovered by respondent against complainant in a state court since the commencement of this suit. This the respondent claims to have been paid in settlement of a prior money demand. Complainant denied it, and he accounted for it in that suit on an entirely different theory. But these facts show the course of dealings in money matters between these parties at the very time when their marriage relations, if any such existed, were most harmonious and affectionate; while there *was no occasion between them for masking*; where no one else had occasion to know anything about the transactions; and even, though private, they were dealings, ostensibly, if not in fact, between these parties in the names and character of William Sharon and S. A. Hill, and not in the names of Mr. and Mrs. Sharon, in the character of husband and wife. They were, ostensibly, dealings at "arms-length," in money matters, sometimes of small amounts, between strangers. This is certainly not the ordinary course of transactions between husband and wife, brought up and educated in this country, imbued with American ideas; and, in view of our laws in relation to marriage, the legal *status*

of marital property rights and marital and domestic polity, we naturally look for some recognition of the relation of wifehood from the husband in private transactions, correspondence and intercourse—domestic, money, and otherwise—between husband and wife, other than the very few instances of the use of the word “wife” in the address of casual letters. We find none on the part of complainant in the relations between him and respondent, so far as they are disclosed to view—not one instance.

Turning from the conduct of the complainant to that of the respondent during all the time from August 25, 1880, till about a year after the time for secrecy under the clause in the contract had expired, *we find it equally barren of any well-authenticated act or word of respondent, public or private, in complainant's presence, or in addressing him by letter, indicating that she during that period, at any time, regarded herself as the wife of complainant.* No witness ever heard her address complainant as husband, or any language indicating the existence of that relationship. We have a number of her letters addressed to complainant during that time—private letters, intended for no eye but his—and he alone was interested in keeping the secret, and could certainly be trusted with an endearing, wife-like letter—be trusted with the keeping of his own secret—but none containing the word “husband,” or its equivalent, or any reference to matters between husband and wife, which either would desire, for that reason, not to have brought to the knowledge of others. All of these letters are addressed “My Dear Mr. Sharon,” “My Dear Senator,” or “My Dear Sen.”—not one “My Dear Husband.” And there is not a line or word in any of them that indicates any idea upon respondent's part that she was the wife of the party to whom they were addressed. There are appeals of the most passionate and pathetic character to his sense of justice, to his generosity, to his manhood, but not one in the character of wife—not one addressed to him in the character of husband. But my associate has fully discussed these letters, and I need not dwell upon them further than to

draw the natural inference, and to say that they are, in my judgment, wholly inconsistent with the idea that, at the time they were written, she thought or supposed she was the wife of complainant. It is inconceivable to me that a woman of the spirit and temper everywhere displayed by respondent, conscious of honor and wifehood, under the circumstances giving birth to some of these letters, could have written them to her husband without reminding him, at least, of the sacred tie binding them together. Surely, to a man susceptible to the influences sought to be brought to bear upon him, an appeal to his honor, generosity and manhood would not be less effective coming from a wife, in the character of a wife, than from a mistress, in her character of mistress. This failure to appeal to complainant as husband, to address him as husband, and to claim the rights of a wife, in these *private* letters, written under the distressing circumstances under which respondent found herself, is inexplicable upon any theory that she at that time supposed she was his wife. The claim that she acted under the advice of the aged colored woman, Mrs. Pleasant, is incredible and unsatisfactory. All her womanly instincts, and her resolute and dominating spirit, in which she is by no means deficient, would have rebelled against such a submissive and pusillanimous course.

Again, she states that on one occasion she concealed herself behind a bureau in her husband's bedroom, and remained there while he and another woman occupied the bed together, and that she was greatly amused at what she witnessed. Is it credible that a high-spirited and passionate woman, as respondent claims to be, and as she has on various occasions shown herself in fact to be, conscious that she was a scorned and grossly injured wife, could quietly witness such an exasperating act on the part of her husband, and tamely submit, and that the incident would greatly amuse her? So, on another occasion, according to her own testimony, she concealed a young girl of 18 behind the same bureau in order that she might hear her husband call her wife while she and her husband went to bed together. What

need of taking such means to satisfy Mrs. Pleasant, or anybody else, of her being the wife of complainant, if she at that time had the evidence of the fact in a genuine written contract, supported by the so-called "Dear Wife" letters, then in her control? Are these the acts of a person conscious of being the wife of the party under such espionage? But what was said on that occasion, in those moments of dalliance, is not in evidence, and we do not know that she, even then, drew from complainant's lips the coveted appellation, "wife," under circumstances where the most endearing terms were likely to be used.

So far as is shown by the evidence, therefore, there is no act or declaration, written or spoken, in the respondent's treatment of complainant during these three years, indicating that she supposed herself to be his wife, or that is not more consistent with the idea that those relations were meretricious rather than marital. The fact that she used complainant's carriage, as she says she did, is cited as evidence of treating her as a wife. But if there be any force in this, it is broken by the further fact, stated by herself, that complainant's mistresses have ever since been accustomed to freely use the same carriage, and be driven by the same coachman, in the same manner. Complainant's admitted mistresses, therefore, seem to have been treated alike, and put upon the same footing, in this particular, with respondent herself. But I need not dwell on points so fully discussed by my associate. Is it too much to say that the whole course of conduct towards respondent, and on the part of respondent towards complainant, during those three eventful years, is in the highest degree improbable had they been husband and wife? Is it possible that a husband and wife, cohabiting harmoniously, could so conduct themselves towards each other, and that during the first year of their married life?

There is strong evidence on the face of the alleged contract itself that it was written over the name of complainant's after the signature had been written, and that parts of it, at least, were written after the paper was folded,

and the signature before folding, showing that the signature must have been first written. Without enumerating the points, or discussing again the particulars pointed out by my associate leading to that conclusion, there is enough in the appearance to render it, in a very high degree, probable, when considered by *itself* alone, without reference to the testimony bearing upon other points, that such is the fact. So, also, upon comparing the signature with hundreds of signatures of complainant written from 1875 to 1883, conceded to be genuine, and the testimony of experts *pro* and *con*, it appears to be a better signature than any other of complainant's in evidence. It is smoother, more flowing, regular, artistic and less cramped than the others admitted to be complainant's. There is not another in all the genuine signatures in evidence that contains all the distinguishing characteristics of the disputed signature. So the fact appears to me to be, after a careful comparison of the disputed signature with all others in evidence, in the light of expert testimony, and even without such light, some of the signatures having been enlarged by the microscope and photographic process, in order to show the prevailing characteristics more distinctly.

Several paying tellers in banks, including the Bank of California, who had paid hundreds and probably thousands of complainant's checks, and others long in his employ, and having the best opportunity to become familiar with his signature, except his former employe, Cushman; also a number of the most skillful experts—testify that the disputed signature in this case is not the genuine signature of complainant, Sharon. There are others besides Cushman, of no special standing as experts, having less reason to be acquainted with complainant's handwriting, and Gumpel, who is a competent expert, who testify that they believe it to be genuine. To my eye, although I do not profess to be an expert, after a long and thorough examination and careful comparison of the numerous signatures in evidence claimed to most nearly resemble the one disputed—there are over 3,000 in evidence—in the light of all expert

testimony, it does not appear to be the genuine signature of complainant. There is one remarkable fact that attracts attention: There are several examples of signatures written by the expert Gumpel, at different times, at the request of different parties, professedly in imitation of complainant's signature, and written from memory, without any signature before him. The signatures thus written, as they were written, and copies of them enlarged under the microscope and by photographic process, are in evidence; and to my eye, after a careful, studious comparison, there is not one of them written by Gumpel that is not more like the disputed signature than any one of all the numerous admittedly genuine signatures of complainant. Every one of those written by Gumpel contains all of the several peculiar and striking characteristics of the disputed signature, while not one of the genuine signatures of Sharon does. Some of Sharon's signatures contain one, and some another, of the peculiar characteristics of the disputed one; but no one contains all, or nearly all, of those characteristics, as Gumpel's do. This striking resemblance between the imitations of Gumpel and the disputed signature may result from the fact, if it be a fact—but whether it be a fact or not we do not know—that Gumpel took the disputed signature, assuming it to be genuine, as his exemplar, and practiced his imitations from that. If this was done, it would intelligently account for the similarity. In that case, however, it shows conclusively that Gumpel at the time fully appreciated all the peculiar characteristics of the disputed signature, and incorporated them into his imitations. That the peculiarities are found, both in the imitations by Gumpel and in the disputed signature, it seems to me, when pointed out, if not before, must be clearly apparent to any tolerably correct and appreciative eye.

The document, it is conceded, was written by respondent, and is alleged by her to have been written at one sitting, no part having been written over, and with interruptions at various points by conversation—discussing the points as they rose during the writing—the time occupied being about

an hour and a half, or perhaps two hours. It was manifestly written with elaborate care in its mechanical execution. It is by far the best and most artistic specimen of respondent's penmanship exhibited in evidence. Not a word had to be erased, added to, corrected, or rewritten, except, in many instances, to shade more heavily, and apparently with different ink. I think the experience of everyone familiar with such work will suggest that it is highly improbable that one could dictate from a book, and another, not accustomed to writing from dictation, sit down and write, so extraordinary a document of such length, while carrying on a conversation discussing the points, legal and otherwise, arising as they went along, without a single mistake requiring correction; especially so, when the last four lines are condensed into a smaller space by omitting several words found in the other corresponding parts of the contract, requiring, to some extent, a reconstruction of the sentences, and also by contracting others, as by using the character "&" for the word "and" in order, apparently, to accommodate the matter to be inserted to the available space; and neither the party dictating nor the party writing would be likely to know in advance how much it was necessary to contract and condense. If this contract was written in the manner and under the circumstances stated, I think it must be conceded that it is a feat of accurate work that must attract attention—a very extraordinary performance.

The ink of the signature appears to be different from the ink in which the contract was written, while there seem to be two kinds of ink in the contract, making three in all. According to Dobinson's testimony, but one kind of ink was in the office, other than copying-ink and red ink; and, according to Piper, the ink was not of the kind used in the office; and the inference arises that it is highly improbable that the instrument could have been written in complainant's office, or in the manner as stated by respondent. Taking the document itself, as it appears upon its face, comparing the signature with the numerous genuine signatures of complainant in evidence, in the light of the expert testimony,

and of the testimony of respondent, as to the circumstances and mode of its preparation and execution, and the positive testimony of complainant, unequivocally denying the execution of the contract, and considering all the testimony directly bearing upon this point, without reference to collateral testimony on other points in the case, and, I think to any candid, unprejudiced mind, accustomed to consider evidence, and able to appreciate the relation of one set of facts to another, it will appear to be in the highest degree improbable that this signature to the alleged marriage contract is the genuine signature of the complainant; and, whether the signature be genuine or not, still more improbable that it was subscribed to the alleged contract after it was written. It further seems highly improbable that respondent should have confided so important a secret as the marriage contract to such persons as the two colored women, Mrs. Pleasant and Martha Wilson, to Vesta Snow, and Nellie Brackett, and have concealed it from her brother, uncle, aunt, and other much more reputable friends, having a far greater interest in her welfare. It is also highly improbable that her counsel would have failed to call her friends, and, at least, offer to show their knowledge of the contract, as a part of the *res gestae*, had it been exhibited to them, or had any knowledge of its existence ever been brought to their notice. Their absence from the witness stand, and from any sort of connection with this trial, is extremely significant. Counsel for respondent were not at all backward in offering, and vehemently pressing upon the attention of the court, any testimony supposed to be favorable to their client's cause. This failure by her to produce the contract for the inspection of respondent's friends, as a vindication of her conduct, which caused them great uneasiness, raises a violent presumption that it was not at the time in existence, and gives rise to a further strong improbability that the contract is genuine.

The discussion of the "Dear Wife" letters I shall leave wholly to my associate.

While section 75 authorizes the making of a "declaration

of marriage" substantially in the form of the one in question, section 77 makes the positive additional provision that "declarations of marriage *must be acknowledged and recorded* in like manner as grants of real property." There is no exception. The declaration in question is neither acknowledged nor recorded, and in this important particular fails to conform to the statute. If the parties had the Code before them when this contract was drawn up, as stated, this provision, being on the same page, could not have escaped attention. It provides certain means of proof which public policy demands in matters so important to the interests of society. There surely could be no good reason for not having it acknowledged, even if it was not desirable to record it. There would then have been valid proof on its face of its genuineness. The fact that the declaration is neither acknowledged nor recorded, as is expressly required by the very statute under which it purports to have been executed, raises an implication against its genuineness, and affords another improbability that it was drawn and executed in the manner alleged by respondent. Surely, when the statute itself provides for, and in the most positive, mandatory terms requires, the evidence of the genuineness of the instrument indicated, it is not too much for the court, in the absence of both such acknowledgment and record, to insist that the other evidence of the genuineness of so extraordinary a contract of marriage should be of the most indubitable and satisfactory character.

To recapitulate the results thus briefly suggested by the evidence more fully elucidated by my associate: We start with a direct irreconcilable contradiction between the complainant and respondent as to the execution of the alleged marriage contract, one affirming and the other denying its execution, and the point to be determined is, which is right? Conceding the parties *prima facie* to stand upon an equal footing as to character for truth and veracity, the question of veracity between them must be determined from the other evidence in the case. There is no other direct evidence upon the principal fact in issue, and we cannot know, absolutely,

where the truth lies. The scale must therefore be turned by the intrinsic probabilities arising out of the known facts, considered in their relations to all the other evidence in the case, and all collateral facts disclosed, from which the truth may be inferred.

We have, then, these several enumerated improbabilities, contradictions and other circumstances fairly suggested by the evidence:

(1) The improbability that complainant, a man of experience, of known intelligence, reared with ideas such as prevail in this country upon the subject, should enter into so extraordinary a contract, in the extraordinary way indicated, with honorable intentions, without a stronger motive than any suggested for departing from the ordinary course in entering into matrimonial alliances; and the greater improbability that he should do it with the basest and most infamous purpose of deceiving, and thereby ruining, the respondent. Such infamous acts should not be attributed to him against his unqualified, positive denial, except upon evidence clearly satisfactory.

(2) The improbability that an honorable and virtuous woman, of the respondent's intelligence, spirit and experience in the ways of the world, in easy pecuniary circumstances, as she claimed to be, of respectable connections and good social position, upon so short an acquaintance of so exceptional a character, without consulting her brother—one who manifested so much interest in her welfare—or other near relatives and friends, should enter clandestinely into so extraordinary a contract, in so extraordinary a manner.

(3) Had there been executed a contract of the character alleged, in the extraordinary manner stated, the improbability that both or either of the parties would, or even could, have conducted themselves with respect to each other in the way we know they did during the month, or nearly the whole month, following the execution of the contract—a course of conduct wholly at variance with our experience

of human action, and the influence and operation of human affections and human passions.

(4) The improbability that respondent would fail to make her marriage contract, if any there were, public for two years after its repudiation by complainant, who, having violated and repudiated the whole contract himself, could no longer expect respondent to comply with its requirements; and the further great improbability that after her expulsion from the Grand Hotel, and for a year after the time prescribed for secrecy had expired, she would neglect to make the contract public, and claim her rights under it; especially so, where the ignominious position in which the respondent was placed called loudly for publicity; and the still further improbability that a proud-spirited and resolute woman, like respondent, would quietly submit and suffer in silence, under the circumstances of contumely in which she was placed.

(5) The improbability that the private correspondence of a husband with his wife, intended for no eye but her own, should generally be addressed, inside, to her by her maiden name, and in no instance manifest any of the sentiments which would be expected in letters from a husband to his wife, and, in the few instances in which he is claimed to have addressed her as "My Dear Wife," the word "wife" should be the only one in the letter indicative of that relation, and be inconsistent in tone and matter with every other part of the letter.

(6) The improbability that, during all the three years next succeeding the date of the alleged contract, there should be no letter addressed by respondent to complainant, and no authentic instance of a verbal communication between them, wherein respondent should address complainant as husband; no instance where there would be some claim or intimation that she considered herself as the wife of complainant, or in which some sentiment or thought should be expressed, from which it can be inferred that she entertained the idea of wifehood, while a number of letters are shown—

in fact, all in evidence—which, in matter and form, are wholly inconsistent with the idea that she considered herself the wife of complainant.

(7) The improbability that during the time of a cordial and harmonious cohabitation as husband and wife, if such there was, the parties should at all times deal with each other, in money matters, at arms-length, and account together from time to time, balancing to a cent on the apparent basis of \$500 a month allowance, and that out of this pitifully small sum, comparatively speaking, the wife of a man of so great wealth should be required to pay all her expenses, rent of rooms to live in, hotel bills, clothing, ornaments and other personal expenses incident to a lady in good society, when that husband had, before marriage, offered to respondent double the allowance to live with him in another capacity, of less respectable character.

(8) The improbability that respondent's important and vital secret should be confided to such parties as Mrs. Pleasant, Martha Wilson and Vesta Snow, whose positions, in the most favorable aspects in which they can be viewed in connection with the circumstances developed in the testimony, are, at least, equivocal, and have been concealed from her brother, who had theretofore been to her all that a brother could be to a sister, and who remonstrated with her against her association with complainant; also from her uncle, who had manifested so great an interest in her as to threaten physical punishment to complainant; from her aunt and her husband, and respondent's other relations and friends, and under the circumstances of ignominy in which she was placed, if revealed to them, that they, or she herself, should have concealed it so long from the public.

(9) The great probability, from the appearance of the alleged contract, and the intrinsic evidence disclosed on its face, that it was written after the writing of the signature, and after the paper had been folded; and the further great probability appearing from a comparison of the signatures to the alleged contract with numerous genuine signatures of

complainant, and from a consideration of all the testimony bearing upon the point that the signature was not, in fact, written by complainant.

(10) The great probability that respondent's veracity cannot be relied on, from the fact that respondent is substantially contradicted by Dobinson as to there being books of the kind she mentions at the time of the alleged execution of the marriage contract in the office of complainant, by other credible witnesses as to the date of the opening of Martha Wilson's restaurant, and that she is directly contradicted as to the numerous acts performed and declarations made by her in 1880, 1881 and 1882, about which neither can be mistaken, wholly inconsistent with the idea that at that time she supposed she was the wife of complainant, by Mrs. Morgan, Mrs. Millett, Mrs. Kenyon, Mrs. Bacon and Mrs. Brackett, thereby discrediting her testimony on material points; also, the improbability arising out of the unsatisfactory character of the testimony given by respondent, and the unsatisfactory tone and manner in which it was given.

(11) The improbability as to its genuineness arising from the fact that the alleged declaration of marriage was not "acknowledged and recorded in like manner as grants of real property," as is expressly required that it should be by section 77 of the Civil Code.

(12) Secrecy is always, as we have seen, and especially in matters which the good of society and public policy require to be made public, a badge of suspicion and fraud. The secret acts of the parties in this case are *indicia* of meretricious, and not marital, relations, and give rise to a further probability that there was no genuine marriage contract.

Without going over the particulars of the evidence so ably and satisfactorily discussed by my associate, I find these intrinsic improbabilities, probabilities, and these other weighty considerations disclosed in the case, to be opposed to the testimony of respondent; and I am wholly unable,

on the other hand, to find any sufficient deductions from the testimony in the case to counterbalance them. In my judgment, the weight of the evidence, even as presented in the case, without an inspection by the court of the original documents, largely preponderates in favor of the complainant, and satisfactorily establishes the forgery and the fraudulent character of the instrument in question.

It would have been far more satisfactory to the court if the original documents themselves had been introduced in evidence, instead of mere photographic copies; or if the court could have been permitted to inspect the originals; but this could not be done without compulsion, or upon such conditions as respondent and her counsel themselves saw fit to prescribe, and to which the court could not submit. We have done the best we could, in view of the disadvantages under which we labored, in this particular, and if the respondent has suffered from a want of inspection of the originals by the court, and nearly all the witnesses—all except the witness Piper—it is the result of her own and her counsel's acts. The inference that must be drawn from withholding an inspection is that their production would be injurious to respondent's case, and this inference only makes more certain the correctness of our conclusion, which is sufficiently obvious without its aid.

I am satisfied, after a most laborious and careful consideration of the evidence, that the instrument in question, the so-called "Dear Wife" letter in ink, and the other "Dear Wife" letters, the latter at least as to the word "wife," are not genuine; that they are forged and fraudulent; and that the alleged declaration of marriage set out in the bill ought to be canceled and annulled as a forgery and a fraud.

The analysis of the evidence by my associate is so searching, exhaustive and satisfactory, and his reasoning so convincing, that no further discussion can be desired. I feel that I can add nothing of interest, or that will give additional force, to the argument, and but for the great importance of the case, and the widespread public interest manifested in it, I should have remained silent. Without

further observations, therefore, I concur in the conclusions on the *material* points reached, in the line of reasoning by which they are established, and in the decree ordered.

As the case was argued and submitted during the lifetime of complainant, who has since deceased, the decree will be entered *nunc pro tunc*, as of September 29, 1885, the date of its submission, and a day prior to the decease of complainant.

The Court thereupon decreed that the alleged marriage contract was a false, fabricated and forged and fraudulent instrument, and as such was null and void; that within 20 days it should be delivered by the defendant to the clerk of the court, who should write on it the word "canceled" with his name and the seal of the court; that he should keep it in his possession, and that the defendant, her heirs, assigns or any one claiming under her, her agents and attorneys should be perpetually enjoined from alleging the genuineness or validity of said instrument and from making use of it in any way to support any right claim under it, and that the plaintiff recover his costs of suit.¹⁶

THE SECOND TRIAL.

In the Superior Court, San Francisco, California, 1884.

HON. JEREMIAH F. SULLIVAN,¹⁷ Judge.

November 1, 1883.

Sarah Althea Sharon brought an action against *William Sharon*. Her complaint alleged that on August 25, 1880, they had been legally married by virtue of a written contract signed by both of them. She asked that her said marriage

¹⁶ The document was never delivered over, and when three years later, David S. Terry who had meantime married Miss Hill, was called upon by the Supreme Court of California to produce the paper, he responded that it had been burned with his residence at Fresno, in 1889. Shuck, "Bench and Bar of California," p. 177.

¹⁷ SULLIVAN, JEREMIAH FRANCIS, Born, Canaan, Conn., 1851; removed to California, 1852; educated public and private schools, Nevada Co., Cal., until 1862; grad. St. Ignatius Coll., San F. A. B. 1870; 1872; LLD. (honorary) 1905. Taught in Ignatius Coll. while studying law, 1872-74. Began practise of law 1874. Member San Francisco board of Ed. 1877-1880. Judge San Francisco Sup. Ct. 1879-1889. See: Who's Who on the Pacific Coast, 1913. American Catholics Who's Who, 1911. San Francisco Direct. 1919.

might be declared legal and valid and then that she might be divorced from him by reason of desertion and of certain infidelities to his marriage contract committed by him, specially set forth; that the defendant was a man of large wealth and had a large income, that since such inter-marriage they had "by their prudent management of mines, fortunate speculations, manipulations of the stock market and other business enterprises, accumulated in money and property more than ten millions of dollars (\$10,000,000), so that now the defendant has in his possession or under his control, money and property of the value of at least fifteen millions of dollars (\$15,000,000) from which he receives an income of over one hundred thousand dollars per month." She further prayed that an account might be taken of their business transactions to ascertain their common property in order that it might be equitably divided between them.

November 10.

William Sharon filed an answer to that complaint denying that he was ever married to the said Sarah Althea and averring that the said alleged declaration of marriage between them, purporting to have been signed by him was false and forged, that he had never signed it and had never heard of it until two months previous.

November 22.

William Sharon removed the case to the Federal Court, alleging that he was a citizen of Nevada and the plaintiff was a citizen of California.

December 3.

The plaintiff gave notice that she would move to remand the case to the State Court.

December 31.

By agreement of the parties, the case was remanded to the State Court.

January 3, 1884.

By agreement of the parties, the trial of the cause was assigned to JUDGE J. F. SULLIVAN, without a jury.

March 10.

The trial began today and was continued from time to time until September 17, when it was submitted to the court for decision.

George W. Tyler, George Flourney, Walter Levy, David S. Terry and Roswell P. Clement,¹⁸ for plaintiff.

W. H. L. Barnes, for defendant.

THE EVIDENCE.

The alleged contract of marriage was as follows: "In the city and county of San Francisco, state of California, on the 25th day of August, A. D. 1880, I, Sarah Althea Hill, of the city and county of San Francisco, state of California, aged 27 years, do here, in the presence of Almighty God, take Senator William Sharon, of the state of Nevada, to be my lawful and wedded husband, and do here acknowledge and declare myself to be the wife of Senator William Sharon of the state of Nevada. SARAH ALTHEA HILL."

"August 25, 1880, San Francisco, Cal. I agree not to make known the contents of this paper, or its existence, for two years, unless Mr. Sharon himself sees fit to make it known. S. A. HILL."

"In the city and county of San Francisco, state of California, on the 25th day of August, A. D. 1880, I, Senator William Sharon, of the state of Nevada, aged 60 years, do here, in the presence of Almighty God, take Sarah Althea Hill, of the city of San Francisco, California, to be my lawful and wedded wife, do here acknowledge myself to be the husband of Sarah Althea Hill. WILLIAM SHARON, Nevada, August 25, 1880."

The Plaintiff testified that this contract was written by her at the dictation of Mr. Sharon, and signed by them; that, upon the contract being signed, they immediately separated, she going to the Galindo hotel in Oakland, and he to Virginia City, Nev. Soon after, and before Mr. Sharon's return, the Galindo hotel was destroyed by fire, and she removed to the Baldwin hotel

in San Francisco. It does not appear that there was any communication between the parties during his absence at Virginia City. He returned a few days before the 25th of September, which was just after she had removed to the Baldwin. On the 25th of September he wrote her several notes, sent by a private messenger. They were as follows:

¹⁸ CLEMENT, ROSWELL P. Born New York, 1826; removed to San Francisco 1853; practised law and engaged in mining. Member Board of Supervisors 1865. Att'y. S. F. Gas Co., 1867-1885.

"My Dear Allie: Can you see me in the parlor of the Grand at five o'clock? Want to put you on your guard about some matters. Answer. Yours, WILLIAM SHARON. Monday, September 25, 1880."

"Palace Hotel, San Francisco, September 25, 1880. My Dear Miss Hill: Can you meet me this evening, say about 5 o'clock, in parlor of the Grand Hotel? Something I want to tell you about of interest to yourself. Will not do to meet you at the Baldwin, so if you cannot see me at the Grand, name a place and hour. Very truly, WM. SHARON."

"Palace Hotel, San Francisco, September 25, 1880. My Dear Allie: There are reasons why I should not call. But as we have tried to meet, and failed, will call in twenty minutes after you get this, and explain. Yours, W. SHARON. Will call at your room."

The plaintiff testified that he had called to see her before the 25th, when these different letters were written, nearly every evening and every afternoon; he was there constantly; that upon his visit after sending the last above note he said there was no use talking, she must leave the Baldwin, and go either to the Palace or the Grand; that his

coming there, and being with her so much, created a good deal of comment; that some parties were going to attempt to put up a job on them, so as to expose them, and he would have to come out and acknowledge the marriage. He accordingly gave her a letter to Mr. Thorn of the Grand, as follows:

"My Dear Sir: The bearer, Miss Hill, a particular friend of mine, and a lady of unblemished character, and of good family, may want rooms. Give her the best, and as cheap as you can, and oblige, WM. SHARON. Sept. 25th, 1880."

She accordingly took rooms at the Grand. Mr. Sharon was away a good deal of the time following, but when in the city he had rooms at the Palace Hotel, and she at the Grand. He paid for the furniture to furnish her room and money with which to pay her expenses, amounting to \$500 a month, as agreed upon, between them. She visited him at his rooms, sometimes taking meals with him there, sometimes spending the evening or the night with him. She at one time, when he came down from Virginia City, gave a musical for him at her rooms, to which a number of persons were invited

and were present. Whether the guests knew the musical was given for him or not does not appear. She at one time went with him to his place at Belmont, near the city, taking a lady friend with her, she says, for the reason that "I did not care to go down alone, as it was not known that we were married." She visited Belmont at several different times subsequently, but always in company with others; never with him alone. At some of those times, she says, she went to assist him in entertaining company. The following are some of his invitations to her to take meals with him:

"My Dear A.: Come and take dinner. Answer."

"Miss H.: Have ordered a nice dinner, and have a sample bottle of wine I want you to try."

"My dear Allie: Come over and join me in a nice bottle of champagne, and let us all be gay before Christmas. If you don't come over and take in the bottle, I may hurt myself. December 21, 1880."

She was invited to and attended a general reception given at the marriage of his daughter, and was given blank invitations by him to fill up and send to her friends.

She testified in general terms: "During the fall of 1880, down to the time Mr. Sharon went east, I spent my nights with Mr. Sharon in his own apartments at the Palace Hotel. I used to go everywhere with Mr. Sharon. He scarcely went anywhere that I did not go with him; either rid-

ing or driving, or attending to business, or going to Oakland on business, that he did not take me with him." He frequently introduced her to friends and acquaintances, but always as Miss Hill. He never introduced her as his wife, nor spoke to her as such in the presence of other persons. There were certain letters purporting to be from him to the respondent, and which she says were written by him, addressed "My Dear Wife." They were as follows:

"My Dear Wife: In reply to your kind letter I have written Mr. Thorn, and inclosed same to you, which you can read, and then send it to him in an envelope, and he will not know that you have seen it. Sorry that anything should occur to annoy you, and think my letter will command the kind courtesy you deserve. Am having a very lively and hard fight. But think I shall be victorious in the end. With kindest consideration, believe me, as ever, WM. SHARON."

"My dear Wife: Inclosed find \$310 to pay bills with, etc. W. S. August 29, 1881."

"My Dear Wife: Inclosed send you by Ki the balance, \$250, which I hope will make you very happy. Will call this evening for the joke. Yours, S. April 1st."

"Palace Hotel, San Francisco, October 3, 1881. My Dear Wife: Inclosed \$550, which will pay expenses till I get better. Will then talk about your eastern trip. Am much better to-day; hope to be up in three or four days. Truly, S."

About the 24th of August the parties began to have difficulty. He charged her with having abstracted some of his papers, which she denied; and she testifies he demanded her signature to a paper to the effect that she was not Mrs. Sharon, and agreeing to pay her \$500 a month for

life, which she refused to sign. She was then turned out of the rooms at the Grand Hotel, under instructions from him. This was in December of 1881. In connection with her removal from the hotel she wrote the following letters to him:

"My dear Mr. Sharon: I have written you two letters and received no reply, excepting to hear that they have been read & commented upon by others than yourself. I also hear you said you were told that I said I could and would give you trouble. Be too much of a man to listen to such talk, or allow it to give you one moment's thought. I have never said such a thing, or have I had such a thought. If no woman ever makes you any trouble until I do, you will go down to your grave without the slightest care. No, Mr. Sharon, you have been kind to me. I have said I hope my God may forsake me when I cease to show my gratitude, & I repeat it, I would not harm one hair of your dear old head, or have you turn one restless night upon your pillow through any act of mine. If you are laboring under a mistake, and not bringing the acquisition for the purpose of quarreling with me, the time will come when you will find out how you have wronged me, & I believe you too much of a man at heart not to send for me & acknowledge it to me. But in your anger you are going to the extreme. I have no way of proving to you my innocence, but God knows I am innocent, as much so as your own daughter, who is now in England. But when I say you are going to the extreme, I mean by calling Thorn or any of your relatives or outsiders, and letting them know of your anger—it simply gives them an opportunity of saying ill-natured things of me, which are unnecessary. Mr. Sharon, I have never wronged you by word or act, and were I to stay in this house for a thousand years I should never go near your door again until you felt willing to say to me you had spoken unjustly to me. You once said to me, 'There was no woman that could look you in the face & say, "William Sharon you have wronged me."' If that be the case don't let me be the first to utter the cry. I had hoped to always have your friendship & best will throughout life, and always have your good advice to guide me, & this unexpected outburst & uncalled-for actions was undeserved. If you would only look at how absurd and ridiculous the whole thing is, you surely would act with more reason. Why should I do such a thing? What was I to gain by doing so? Pray give me credit for some little sense. I valued your friendship more than all the world. Have I not given up everything and everybody for it, & one million of dollars would not have tempted me to have risked its loss. I feel humiliated to death that Thorn or any one else could have it to say I was ordered out of the house. I have a world of pride, & I ask you to at least show me the respect to let Thorn have nothing more to say or do in the affair. I have always been kind to you, & tried to do whatever I could to please you, & I hope at least in your unjust anger you will let us apparently part friends, & don't do or say anything that could create or make any gossip. Think how you would like one of your daughters treated so. If you have any orders to give or wish to make known, make them known in any other way than through your relatives, or through Thorn. Don't fight me. I have no desire or wish to in any way be unkind to you. I have said

nothing to any one about the letter I have received, nor do I wish to even speak to Thorn on the subject. You have placed me in a strange position, senator, & all the pride in me rebels against speaking upon the subject. I have been looking at some very nice places, but I cannot get them until some time during the coming month. If you still desire me to go away, make it known to me, & I will obey you. As ever, A."

"Palace Hotel, San Francisco, ———, 18—. My Dear Mr. Sharon: I cannot see how you can have any one treat me so—I, who have always been so good and kind to you—the carpet is all taken up in my hall—the door is taken off and away—and it does seem to me terrible that it is you who would have done—I met Mr. Thorn in the hall as I started to come over to see you, and asked him if you had order such a thing done—& he said that I must move out; that it was your wish—I told him I had written you a note when I received his, and told you if you wished me to go to send me word—for it was not convenient to get the place I wanted until some time in this month—he said that you had told him to see that I went—so I said no more, but came over to see you—Ah, Senator, dear Senator, do not treat me so—whilst every one else is so happy for Christmas, don't try to make mine miserable—remember this time last year—you have always been so good, don't act so—now—let me see you and talk to you—let me come in after Ki has gone, if you wish—& be to me the same Senator again—don't be cross to me—please don't—or may I see you, if only for a few minutes—be reasonable with me, and don't be unjust—you know you are all I have in the world—& a year ago you asked me to come to the Grand—don't do things now that will make talk—you know you can find no fault with me—may I see you for a few minutes, & let us talk reasonably about all this—I know you will—I know it is not in your nature to be so hard to one that has been so much to you—don't be unjust—Say I may see you.—"

"Mr. Sharon: I received a letter from Mr. Thorn in regard to my room. Of course I understand it is written by your orders, for no human being can say aught of me except with regard to yourself. Now, Mr. Sharon, you are wronging me; so help me God, you are wronging me. I am no more guilty of what you have accused me than some one who never saw you; and would you, who asked me to come to this house, whom I have been up with nights and waited on and cared for, and would have done anything on earth to help you, be the one to wrong and injure me,—a man whom the people have placed enough confidence in his honor to put him in the United States senate, to stoop to injure a girl, and one whom he has professed to love?"

She took up her residence at a private house after leaving the Grand, and during the summer of 1882 they seem to have adjusted their difficulties to some

extent, and she again visited him at his rooms. At one time she secreted herself, and saw Sharon and another woman undress and go to bed together in his room,

and afterwards told it as a laughable joke, and this at a time when she testifies she was his wife. At another time she secreted a young girl, not yet 20 years of age, and who seems to have become a kind of a confidant of hers, behind the bureau in his room to see Sharon and herself go to bed together, and hear what was said, and the girl remained there until they had retired and he had fallen asleep, and then crept out of the room.

The defendant testified positively that the relation of husband and wife never existed between him and the plaintiff; that she was his mistress, for which he agreed to and did pay her \$500 a month; that the alleged marriage contract was never signed by him, and that he never addressed a letter to her as "My Dear Wife;" and there was other evidence strongly tending to show that the contract and addresses to these letters were forgeries.

William Hornblower: I am an attorney at law in this city: I know Miss Hill. I have seen her in this court-room, and I met her once before. That was a year ago, on the corner of Montgomery and California streets. She was with Mrs. Samson. I had two conversations previous to that, in the same month of March, a year ago, with Mrs. Samson. At that time Mrs. Samson introduced me to Miss Hill. She said: "This is the lady I have spoken to you about, that desires to bring an action against Mr. Sharon for breach of promise of marriage." Now, the plaintiff here, if this was the lady, she had a veil on. I never

saw her before or since, until I came here in this court-room. Mrs. Samson said she had fifty letters. I told her three or four letters—good, square promises from old Sharon—was all I should want. She said she hadn't time to look over them, but she would in a few days; and I told her when she got ready to come into my office, and fetch the papers with her. The ladies were coming down from Montgomery street, from the north going south, on the west side of the street, and after the conversation I passed on. It was, I suppose, about 4 o'clock in the afternoon. This was in March, 1883,—about the 28th or 29th of March.

Cross-examined: I do not remember how she was dressed. She had a dark veil on at the time, and I don't swear positively that that is the woman, but I believe this is the lady. I did not see her face except through the veil. I was admitted to practice in the Supreme Court of this state a year and a half ago. At the time of the conversation referred to I was a lawyer. I was not her lawyer. If she had employed me instead of you, then, of course, I would have been in a different position. She employed you instead of me. When Mrs. Samson introduced me to the lady, who was veiled, she said, "This is the Miss Hill," and I think I bowed to the lady, and the other conversations Mrs. Samson spoke about, which you didn't want to hear; and this lady said, "Well, I have fifty letters from Mr. Sharon." I told her all I wanted was three good, square letters that had a good, square promise. The reply that

she made was that she hadn't yet looked over her letters sufficiently, but that she would come back in a few days. This is the last I saw of her. I never saw her since until I saw her here in this court-room. I cannot say that the statement that I made to her about the three letters was advice given her as a lawyer, because I was not her lawyer. Mrs. Samson brought this lady to me for the purpose of making her a client; and I had a talk with her with the understanding that she was to get these letters, select the three with the promises in them, and bring them to me. I understand it to be the duty of a lawyer to keep secret what he hears from his client, but I do not understand it is the duty of a lawyer, if he is called upon to testify in court, that he can claim his privilege as a lawyer to testify to anything he hears from anybody who is not his client and not given to him in a confidential manner. * * * I think Mrs. Samson first spoke to

me about the case about the 18th or 19th of March, in front of the Nevada Bank, or somewhere along there. She asked me how I was getting along. She says, "I have got a case for you that there is \$100,000 in; do you want to make it?" I said, "Yes." She said, "You will have to furnish some money. Have you got any?" I said, "I have got \$6,000 or \$7,000 in this bank. If it is a legitimate case I want it." "Well," says she, "it is." I says, "What is it?" Says she, "It is a breach of promise case against Mr. Sharon." I said, "Oh, is that all?" She said it was, and I met her again. The next time I met her she said: "Well, what do you think of that case now?" I said, "I never gave it a thought." She said, "I am going to fetch the lady down." I said, "All right; fetch her down." The next time I met her was on the sidewalk in front of my office. I did not take her up into my office. I had never met Miss Hill before.

The *plaintiff's counsel* then moved to strike out the whole of the testimony of the witness "on the ground that it was a privileged communication, and that he had no right to disclose it." JUDGE SULLIVAN sustained the motion, and the evidence was stricken out, to which the defendant excepted.¹⁹

¹⁹ In reversing the judgment of the Trial Court, the Supreme Court said: "This ruling was erroneous for two reasons,—it was not shown that the witness was the attorney for the plaintiff, or that the communication was confidential, if he had been. The witness testifies positively that he was not her attorney, and the facts testified to by him show that he was not. And the communication that took place was on a public street, and in the presence of, and mostly with, a third party, and was not, for that reason, in any sense, confidential, or in the course of his employment. It is further contended that the evidence was immaterial, and to strike it out worked the appellant no injury. The statement in the presence of the respondent, that she was the person who desired to bring an action against Mr. Sharon for breach of promise of marriage, was

During the cross-examination of the Plaintiff, the defense learned that on May 1st, 1883, the plaintiff had visited a newly made grave prepared for the body of Anson Olin at the Masonic Cemetery at San Francisco and there in the presence of a Mr. Gillard an employee, had deposited under the box which was to contain the coffin, a package. The body was the next day deposited in the grave over the package. Under an order from the health officer, the grave was opened and the package found under the coffin. It contained a few articles of Sharon's underwear. Mr. Evans held up each piece before the plaintiff and asked her if she had ever seen them before. She replied that she had not.

A witness who said she was a fortune teller swore to conversations with plaintiff in the fall of 1882 and spring of 1883. She gave her a charm and advised her in order to bring Sharon under her influence that she must wear about her person, for nine days and nights certain articles of his clothing, and aft-

erwards she must put them in a newly made grave before the body was put in, between the hours of twelve and one at night. She told her that when the buried clothing would rot the man she desired to marry would either marry her or die. There was also testimony that plaintiff wore about her left leg a sock of Sharon's and that she slept in one of his shirts.

It was proved that after she had been expelled from the Grand Hotel, and denied access to Sharon's rooms she asked Ki, a Chinese servant, to admit her there, her object being to work a charm on the defendant by sprinkling a black powder around his chair, some white powder in his bottles of liquor on the sideboard and between the sheets of his bed. She paid the Chinaman five dollars and promised him a thousand more and forty dollars a month if the charm worked. Ki became alarmed, fearing she was going to poison the liquor, told his master and refused to let her in the rooms again.

The following agreement was produced during the trial: "This agreement made and entered into this 24th day of October, 1883, by and between Mrs. William Sharon, formerly Sarah Althea Hill, of the city and county of San Francisco, party of the first part, and George W. Tyler of the same place, party of the second part, witnesseth, that whereas, about three years ago the party of the first part entered into a contract of marriage with one William Sharon, as provided by the Civil Code of California, no ceremony having been performed, and whereas, said William Sharon is now disposed to repudiate said marriage and deny its binding force and efficacy,

inconsistent with her claim that she was then his wife, was a declaration against her interest, and, if not true, called upon her for a denial. Having failed to deny it, the fact that such statement was made, and her failure to controvert its truth, were competent and material evidence against her." 22 Pac. Rep. 40.

and whereas, said party of the first part has employed said party of the second part to commence and prosecute to final hearing, or settlement, all such suit or suits as may be necessary to vindicate the good name of the party of the first part, and secure to her a division of the common property of herself and her husband, or a just and suitable provision for her support out of his property, and to defend all such suits as may be brought against her by said Sharon: Now, therefore, it is mutually agreed by and between the parties hereto as follows: The party of the second part, as the attorney of the party of the first part, is to commence and prosecute to final determination, and defend, all such suits as may be brought, or may be necessary or proper for the complete vindication of the name of the party of the first part, and the enforcement of her rights as against said William Sharon, and is to advance the money to pay the costs and all ordinary expenses of any litigation that may ensue in carrying out the objects of this agreement; and as compensation he is to receive one-half of all sums realized or secured to her by such litigation. The party of the second part agrees that he will not settle with said Sharon, or dismiss or compromise any suit or suits that may be brought, without the consent of the party of the first part obtained, and of her agent, W. M. Neilson. The party of the second part agrees to pay one-third of the amount necessary to secure the legal services of D. M. Delmas, or some other person she may desire, as counsel on such litigation, provided his services can be secured for the sum of \$1,000. The party of the first part agrees to pay the party of the second part one-half of all money or property secured from said William Sharon by settlement, promise, or litigation, and said party of the first part agrees not to settle or compromise with said Sharon without the consent of the party of the second part."

February 19, 1885.

Judge Sullivan ruled that plaintiff and defendant did sign the paper writing as set forth in finding 2, and mutually agreed to take each other as husband and wife; that in September, 1880, they commenced living and cohabiting together in the manner usual with married people, in an apartment furnished by him, and so continued to live and cohabit together down to November, 1881; that he wrote to her several letters addressed, "My dear wife," and that during all of said time they mutually assumed "towards each other" marital rights, duties and obligations.

He therefore decided that the parties had become legally husband and wife, under the provisions of the Civil Code of California (sec. 55), which is: "Marriage is a personal

relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations."

THE COURT thereupon adjudged that the parties were husband and wife and decreed a divorce to the plaintiff with costs, and as alimony one-half of the defendant's estate, real and personal.

February 16, 1885, JUDGE SULLIVAN had made the following order:

"It is hereby ordered that the defendant pay to the plaintiff, or her order, on or before the ninth day of March, 1885, the sum of seven thousand five hundred dollars as alimony herein, and the further sum of twenty-five hundred dollars on or before the eighth day of April, 1885, and the same amount on or before the eighth day of each and every month thereafter, as alimony until the further order of this court. It is further ordered that the defendant pay as counsel fees herein, on or before the ninth day of March, 1885, the sum of fifty-five thousand dollars, that is to say—twenty thousand dollars to Messrs. Tyler & Tyler, or order; ten thousand dollars to George Flournoy, or order; ten thousand dollars to Walter Levy, or order; ten thousand dollars to David S. Terry, or order, and five thousand dollars to R. P. Clement, or order; and in case any of such payments are not made on or before the time herein fixed, then the party or the parties entitled thereto shall have execution therefor, pursuant to section 1007 of the Code of Civil Procedure of the state of California."

February 26.

William Sharon took and perfected an appeal from the judgment of the Superior Court to the Supreme Court of the State and gave a bond which under the statute operated as a *supersedeas* and a stay of all proceedings.

January 31, 1888.

The Supreme Court of California ruled that the finding of the Court below, viz: On an appeal from the judgment (which proceeding did not allow the Appellate Court to weigh the evidence adduced at the trial) sustained the judgment of the Judge of the San Francisco Superior Court that the parties were legally married. But the Supreme Court set aside as grossly excessive, the order of JUDGE SULLIVAN (*ante*) as to counsel fees and alimony. It struck out everything that was given by that order to the plaintiff's law-

yers and made the sums payable to her as alimony, respectively \$2,599 and \$500, instead of \$7,500 and \$2,500.²⁰

July 17, 1889.

The Supreme Court, the case now coming before the Appellate Judges on an appeal from an order denying a new trial) the case

²⁰ 75 Cal. Reports, 1:22 Pac. Rep. 26. On this point the Supreme court said: Section 137 of the Civil Code provides, "While an action for divorce is pending the court may in its discretion require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action." There can be no doubt the order must require the alimony to be paid to *the wife*, and it seems equally plain it was intended that the money ordered to be paid, as necessary to prosecute or defend the action, should be ordered paid to her. Section 137 regulates the matter in this state, and that section contemplates an order to pay to the wife. It would seem that where the statutes are silent on the subject, temporary alimony and suit money can be awarded to the wife. 2 Bish. Mar. & Div. § 396. But when awarded, either by statute or upon general principles, "suit money" is awarded to her; and by section 137 counsel fees, if ordered to be paid, are ordered as part of her necessary expenses for prosecuting or defending the action for divorce. The order here was a direct judgment for money in favor of persons not parties to the suit, and to that extent was irregular and void. Moreover, it would seem to be an undeserved reflection upon the administration of justice in the superior courts to hold that at least six lawyers were "necessary" to present the merits of plaintiffs cause. The wife cannot, as of course, employ as many attorneys as she chooses and compel the husband to furnish funds for whatever she is to pay them. The rule was laid down in Massachusetts to be that the sum required to be paid by him is not to exceed what, under all the circumstances, may be reasonable for the compensation of counsel and the payment of other charges, without regard to what might properly be demanded as between counsel and client by the counsel actually employed. *Baldwin v. Baldwin*, 6 Gray, 341.

In *Williams v. Williams*, where it would seem several members of the bar were employed, the supreme court of Wisconsin said: "There can be no doubt whatever that any one of the attorneys for plaintiff, without any severe strain upon his professional ability, would have prosecuted this action to the same result." 29 Wis. 528. Making every allowance for the suggested difficulties in the prosecution of the case at bar and the labors of counsel,—the full extent of which does not, perhaps, appear on this appeal,—we can conceive of no case of the character of the present which can require as necessary the array of counsel who appeared for the plaintiff herein." The court then pointed out that the plaintiff and the leading counsel had an express contract as to what she should pay

on the former appeal being: Do the findings of the trial judge support his judgment? while the case on this appeal is: Is the evidence sufficient to maintain his findings?, decided that the evidence did not support the judgment of the trial court that the parties were married. The judgment was therefore reversed and set aside.²¹

for his services and for any other counsel that might be necessary. So they must not be permitted here to say for her or for themselves that they are entitled to compensation from another source. If counsel had abandoned her case it might perhaps have been necessary to provide the plaintiff with means to secure legal assistance.

"And it seems very clear that the amount of temporary alimony ordered to be paid to her is excessive. Where the income of the husband is very large, and the parties have publicly lived together in a style conformable to such income, a just allowance would seem to be one sufficient to enable the wife to continue the enjoyment of many luxuries which habit has made apparent necessities; this, however, subject to the limitation that, while her suit is pending, she is to live in the discreet and quiet manner appropriate to one whose domestic relations are being made the subject of public investigation; and without expenditures for merely display, or the gratification of personal vanity. In the case now here, the plaintiff never enjoyed a portion of the defendant's income accordant with the position of his recognized wife. Assuming every fact in her favor, she was, at the commencement of their relations, willing that the marriage should be kept secret for a definite time, and, during that period, to live in comparative obscurity, upon an allowance of \$500 a month. That large sum (however small a portion of the defendant's actual income) was amply sufficient for her comfortable support, and to supply her with many of the appliances of wealth. An order providing for the continuance during the pendency of the action of the sum that the defendant had agreed to pay her during their cohabitation, and until their marriage should be made public, would surely have provided for her reasonable, not to say liberal, support; whatever was more than reasonable was excessive. The discretion of the court below is a *legal* discretion to be reasonably exercised." 16 Pac. Rep 345; 75 Cal. 1.

²¹ In reversing the decision of Judge Sullivan in favor of the plaintiff the Supreme Court of California said: (79 Cal. Rep. 638); 22 Pac. Rep. 29, 131).

"Their acts and conduct were entirely consistent with the meretricious relation of man and mistress, and almost entirely inconsistent with the relation of husband and wife. It may be said that the public manner in which he received her, and introduced her to his friends, was inconsistent with his claim that she was his mistress, and not his wife. This might be so with some men, but the record before us bears unmistakable evidence of the fact that this man had sinned so long and so openly in this respect that he did

On the 22nd of January, 1889, Mrs. Terry's counsel gave notice of a motion in the Superior Court for the appointment of a receiver who should take charge of the Sharon estate which she alleged was being squandered to the injury of her interest therein acquired under the judgment of Judge Sullivan. On the 29th of

not care to conceal his wrong-doing even from his own family. Besides, it must be remembered that there was nothing openly improper in their relations, in connection with their association with other persons. She was received and treated as a mere lady friend and acquaintance, and not otherwise. That any greater intimacy existed between them than would have been proper as between friends of the opposite sex, was carefully concealed from the public. But by what stretch of judicial interpretation of the statute, upon what rule of evidence or of common sense, can it be held that parties assume a relation by uniformly and persistently denying it, or upon what principle of law or evidence can it be presumed that parties are husband and wife from evidence that they have lived as single and unmarried people, and held themselves out to the world as such? These parties had no common home or place of abode. They held themselves out to their relatives, friends, acquaintances, and the world as unmarried. The respondent never at any time assumed the name of her alleged husband. There is nothing to show that they had taken upon themselves the mutual duties and obligations of the sacred and confident relation of husband and wife. Their private letters and notes, with the single exception of the addresses "My Dear Wife" on some of them, which are so vigorously attacked as forgeries, do not contain a single word indicating that such a relation existed between them, no mention of it, no reference to each other as husband or wife, no words of affection or endearment, nothing that one might expect to find in communications between husband and wife. But the strongest and most conclusive evidence to our minds that no such relation existed, or was supposed by the respondent to exist, is presented by her letters to him when she was about to be turned out of doors at his instance. She appeals to his friendship, but not to his love, or to his duties and obligations as a husband. She pleads her service to him as a friend, and as a nurse, but not as a wife. No claim of her right to his protection; no assertion of her rights as a wife. It is past all belief that any woman could have passed through an experience so bitter and humiliating, and allow herself to be thrust into the street by her own husband, and in her many appeals to him make no mention of the relation that existed between them. We are clear that the evidence was insufficient to sustain this finding. It is not a question of the weight of the evidence, but whether, giving full credit to it, it proves the assumption by these parties of marital rights, duties, and obligations. It is a question of law, and not of fact, and, as matter of law, we hold the evidence to have been insufficient."

January an injunction was issued by the United States Circuit Court commanding her and all others to desist from this proceeding.

The motion for a receiver was submitted after full argument and on the 3rd of June following, Judge Sullivan rendered a decision asserting the jurisdiction of his court to entertain the motion for a receiver and declaring the decree of the United States Circuit Court inoperative. He reviewed the opinion of Justice Field in the revivor suit, taking issue therewith. As that decision, though it had been affirmed by the Supreme Court of the United States nearly a month before, having decided that the motion for a receiver could not be made, he set the hearing for the same for July 15, 1889.

On the 27th of May, one week before the rendering of this decision by Judge Sullivan, the mandate of the United States Supreme Court had been filed in the Circuit Court at San Francisco, by which the decree of that court was affirmed. Whether a receiver would be appointed by Judge Sullivan in the face of the decision of the Supreme Court of the United States, became now an interesting question. Terry and his lawyers affected to hold in contempt the Supreme Court decree and seemed to think no serious attempt would be made to enforce it.

Meantime both of the Terrys had been indicted in the United States Circuit Court for the several offenses committed by them in assaulting the marshal in the court room as hereinbefore described. These indictments were filed on the 20th September. Dilatory motions were granted from time to time and it was not until the 4th of June that demurrers to the indictment were filed. The summer vacation followed without any argument of these demurrers. It was during this vacation that Justice Field arrived in California, in the month of June. The appeal to the Supreme Court of the State from Judge Sullivan's order denying a new trial had been argued and submitted on the 4th of May, but no decision had been rendered.

Despite the pendency of that appeal by reason of which the judgment of the Supreme Court of the state had not yet become final, and despite the mandate of the United States Supreme Court affirming the decree in the revivor case, Judge Sullivan, had set the 15th of July for the hearing of the motion of the Terrys for the appointment of a receiver to take charge of the Sharon estate. For them to proceed with this motion would be a contempt of the United States Circuit Court.

The arrival of Justice Field should have instructed Judge Terry that the decree of that court could not be defied with impunity and that the injunction issued in it against further proceedings upon the judgment in the state court would be enforced with all the power authorized by the Constitution and laws of the United States for the enforcement of judicial process.

As the 15th of April approached the lawyers who had been associated with Terry, commenced discussing among themselves what would be the probable consequence to them of disobeying an in-

junction of the United States Circuit Court. The attorneys for the Sharon estate made known their determination to apply to that court for the enforcement of its writ in their behalf.

On the 15th July, Judge Terry and his wife appeared in the Superior court room. Two of their lawyers came in, remained a few minutes and retired. Judge Terry remained silent. His wife addressed the court, saying that her lawyers were afraid to appear for her. She said they feared that if they should make a motion in her behalf for the appointment of a receiver, Judge Field would put them in jail; therefore, she said, she appeared for herself. She said if she got in jail she would rather have her husband outside, and this was why she made the motion herself, while he remained a spectator.

The hearing was postponed for several days. Before the appointed day, the Supreme Court of the State, on 17th July rendered its decision reversing the order of Judge Sullivan, refusing a new trial, thereby obliterating the judgment in favor of Sarah Althea and the previous decision of the appellate court affirming it.

On the 2nd August the demurrers to the several indictments against the Terrys came up to be heard in the United States District Court. The argument upon them concluded on the 5th. On the 7th the demurrer to one of the indictments against Sarah Althea was overruled and she entered a plea of not guilty. No decision was rendered upon either of the five other indictments.

On the following day—August 8—Justice Field left San Francisco and went to Los Angeles for the purpose of holding court.

The case being sent back to the Superior Court of San Francisco, was tried before Judge James M. Shafter²² who had succeeded Judge Sullivan in July, 1890. On August 4 he rendered his decision, making the following findings and conclusions of law: viz.: That the plaintiff and William Sharon, deceased, did not on August 25, 1880, or at any other time consent to intermarry or become, by mutual agreement or otherwise, husband and wife; nor did they, thereafter, or at any time, live or cohabit together as husband and wife or mutually or otherwise assume marital duties, rights or obligations; that they did not on that day or at any other time in the city and county of San Francisco or elsewhere, jointly or otherwise, make or sign a declaration of marriage in writing or otherwise; and that the declaration of marriage mentioned in the complaint was false, counterfeited, forged and fraudulent and, therefore, null and void. Therefore the plaintiff and William Sharon were not on August 25, 1880, and never had been, husband and wife and plaintiff had

²² SHAFTER, JAMES McMILLAN (1816-1892). Born in Vermont. Grad. Wesleyan Univ. (Conn.) Member Vt. Legislature and Secretary of State, 1842-1849. Settled in San Francisco, 1855, entering his brother's (Oscar L. Shafter) law office. State Senator 1862. Member Constitutional Convention, 1878; President State Agricultural Soc. 1878; Judge Superior Court (S. F.) 1889-1890. Died in San Francisco.

no right or claim, legal or equitable to any property or share in any property real or personal, of which William Sharon was the owner or in possession of, or which was then or might thereafter be held by the executor of his last will and testament. Judgment was therefore entered for the defendant.

On August 5, 1892, an appeal having been taken and the plaintiff having become insane, R. Porter Ashe was appointed her guardian.²³ In October, 1892, the appeal was dismissed by the Supreme Court.

THE THIRD TRIAL²⁴

*In the United States Circuit Court, San Francisco,
California, 1888.*

HON. STEPHEN J. FIELD,²⁵ *Presiding Justice.*

HON. LORENZO SAWYER,²⁶ *Circuit Judge.*

HON. GEORGE M. SABIN,²⁷ *District Judge.*

March 12.

William Sharon left a will naming his son, Frederick W. Sharon and his son-in-law, Francis G. Newlands, as executors. The latter declined to act and to Frederick W. Sharon, as sole executor, letters testamentary were issued.

On November 4, 1885, William Sharon executed a deed of all his property to his said son and son-in-law, subject to various trusts, for the protection and management of his large estate and its final distribution to his children, grand children and other persons. This deed concluded with a solemn assertion that Sarah Althea Hill was not and never had been his wife, that he never proposed marriage to her or married her in any form or manner, that the so-called marriage contract and the alleged letters from him were

²³ On March 19, 1892, Mrs. Terry was adjudged insane by the Court and was committed to the State Asylum for the Insane at Stockton. Her malady at first acute, became chronic.

²⁴ Bibliography. See ante p. 470.

²⁵ FIELD, STEPHEN JOHNSON (1816-1899). Born Hadam, Conn. Grad. Williams Coll. 1837; admitted to N. Y. bar and practised there until 1849, when he removed to California, settling at Marysville where he became its first Alcalde; member Cal. Legislature, 1859; Judge Supreme Court (Cal.) 1857-1863; Associate Justice U. S. Supreme Court 1863-1897; Member Electoral Commission, 1877.

²⁶ See ante p. 470.

²⁷ SABIN, GEORGE M. Born Cayahogo Co., O., 1835. Grad. West. Reserve Coll. 1856. Admitted to bar, 1858; served through Civil War and removed to Nevada, 1868; United States District Judge, 1882-1890.

forgeries, and he specifically empowered and directed his trustees to vigorously contest, in every court where a contest can be made, her false claims and pretensions. Frederick W. Sharon resigned his trusteeship and Francis G. Newlands remained the sole trustee.

A bill of revivor is now filed by Frederick W. Sharon, executor to carry into execution the decree of this Court made on September 29, 1885. The bill is against David S. Terry and Sarah Althea Terry, his wife, the latter having recently married the said Terry. It alleges that the former decree in the case had abated by the death of the plaintiff, William Sharon; that the alleged marriage contract has never been surrendered for cancellation, that he fears that the defendant will seek to enforce property rights by virtue of that writing, under the decree of the Superior Court of San Francisco.

April 14.

Today a similar bill was filed by Francis G. Newlands, Trustee. It stated that the property of Sharon was over \$5,000,000 in value, that the defendant claimed the rights of a wife in that property, that the State Court had rendered a judgment declaring her the wife of William Sharon, had granted her a divorce from such marriage, and awarding her one-half of all his community property, ordering an accounting, and giving her alimony; that she is seeking to enforce that judgment; that the said judgment was founded upon the said declaration of marriage, adjudged by this court to be forged and fraudulent, and that its execution and enforcement ought in equity to be restrained, as an infringement of the decree and prior jurisdiction of this court, and of the rights of the complainants.

He therefore asks that the former proceedings and judgment be revived and that she be forbidden to enforce the decree of the State Court.

W. F. Herrin,²⁸ for complainants; *John A. Stanley*,²⁹ *Thomas P. Stoney*³⁰ and *George B. Hays*,³¹ for Respondents.

²⁸HERRIN, WILLIAM FRANKLIN. Born Jackson Co., Oregon, 1854. Grad. State Agr. Coll. Oreg. 1873 and Cumberland Law School, Tenn. 1875. Removed to California; General Counsel and Vice Pres. Southern Pac. R. R. 1916 and Bank of California.

²⁹STANLEY, JOHN A. Born, North Carolina, admitted to bar in that state and practised there. After the Civil War removed to San Francisco. For many years a member of the firm of Stoney, Stanley & Hayes; County Judge San Francisco; Chairman of Board of Freeholders who drew up the city charter for San Francisco. Died in San Francisco. See Shuck, Oscar T., Bench and Bar of Calif., p. 493 (1901, ed.); San Francisco Call, Sept. 23, 1899; San Francisco Chronicle, Sept. 23, 1899.

³⁰STONE, THOMAS PORCHER (1835-1891). Born, Charleston, S. C. Ed. Hudson Prep. Aca., Mount Zion Coll. Winnsboro, S. C.; South Car. Coll. Uni. North Car.; Uni. Va. Removed to Napa, Cal., 1856. He began study of law 1858 and admitted to practise 1859. En-

The Respondents' Counsel demurred, maintaining that the Court had no jurisdiction of the subject matter. Our objections are intended to apply to the original bill in the suit of *Sharon v. Hill*. The Circuit Court possessed no jurisdiction of the subject-matter of that suit, and no power to make the decree entered therein; the same was absolutely null and void, and therefore there is nothing to revive. Secondly: The original suit was to have canceled a piece of paper of no commercial value, and to give a Federal Court jurisdiction the matter in dispute must exceed "the sum or value of \$500," under the act of 1875, increased later to \$2,000.

Third: The bill of complaint does not sufficiently describe the property of the deceased. Fourth: That the original suit abated by the transfer of Sharon's property under the deed of trust. Fifth: That the judgment and decree of the State Court took away the jurisdiction of the Federal Court. Sixth: The record shows that the suit in the State court was removed on the petition of Sharon to the United States Court and afterwards by agreement of his attorneys was remanded to the State Court. This and the failure of his attorneys to present to the State court the judgment of the Federal Court was an abandonment of its protection; and that the execution of the decree in the Federal Court by injunction against prosecuting proceedings under the judgment of the State court is forbidden by the act of Congress prohibiting the issue of an injunction to stay proceedings in a State court except in cases of bankruptcy.

September 3.

MR. JUSTICE FIELD: The objections taken by counsel to the decree on the original bill could have been urged when the original bill was pending, and, in fact, were presented so far as they relate to the power of the court to grant the relief prayed. 10 Sawy. 50, 20 Fed. Rep. 3. And the general doctrine is that objections taken to the original bill, or which might have been thus taken, cannot again be made upon a bill of revivor, where the original suit has abated

listed in Marion artillery (Confederate army) 1861; returned to Napa 1866. County Judge, Napa Co. 1871-1875. Removed to San Francisco 1880. Entered partnership with ex-Judge Stanley and George R. B. Hayes. Died in San Francisco. See, Hist. Napa and Lake Co.'s Cal. 1881. Morning Call (San F.) Dec. 20, 21, 1891.

³¹HAYES, GEORGE B., was born in Belfast, Ireland in 1847. He came to California in 1863 and was admitted to the bar in 1869. Was a member of the Legislature from San Francisco in 1869-70 and of the Board of Freeholders in 1886. Associated with his uncle, William Hayes, and himself in the practise was John A. Stanley, before the latter became County judge in 1870. The uncle died in 1881,

by the death of the plaintiff. The only questions which can then be raised are whether the party in whose name the revival is asked has succeeded to the interests, rights, or claims of the deceased, or has become the legal representative of his estate, so as to enable him to continue the prosecution of the suit, if not already determined, or to revive it so as to enforce the judgment rendered, if not already executed. An attack upon a judgment in a proceeding to revive it is a collateral attack, and can avail only when there is an absolute want of jurisdiction, either of the parties or of the subject-matter.

As to the second objection, by "matter in dispute" is meant the subject of litigation. This in this case is the enjoining of the use and the cancellation of a paper, as a forgery and fraud. But it is insisted that this contract was not capable of pecuniary estimation; if forged, as claimed on one side, it would be a valueless paper; if genuine, as claimed on the other side, it could of itself establish no property rights in the defendant. What might ultimately result from the marriage which it might aid in proving was only prospective and contingent, lying among mere possibilities. We do not so construe the alleged contract, or the rights it conferred upon the alleged wife, and the obligations it imposed upon the alleged husband. If genuine and valid, it established a marriage between the parties from its date, assuming, as claimed by her, that it was followed by the requisite consummation. It is not a contract to marry at a future day, or an admission that a marriage has already taken place. It is an instrument by which, on the assump-

and Judge Stanley having left the bench, and ex-County Judge Stoney of Napa having removed to San Francisco, the firm of Stanley, Stoney & Hayes was formed which lasted for ten years, until Judge Stoney's death. The firm afterwards became Stanley, Hayes & Bradley. For twenty years there was no more laborious leader of the Metropolitan bar than Mr. Hayes and few who enjoyed a larger revenue from the practise. He died suddenly on April 5, 1896, and was buried with imposing ceremonies from the great cathedral on Van Ness avenue. He left no issue. Shuck, Bench and Bar of Cal., 550.

tion mentioned, the marriage relation was immediately created. It therefore imposed upon him from that date all the obligations of a husband which the law creates, and among which is that of supporting the defendant as his wife in a manner suitable to his condition of life. In her complaint in the State Court, which became by her pleadings in the Circuit Court a part of the record there, she assumes that he was, when married, worth \$5,000,000, for she avers that he was not then worth more than that sum, with an income of \$30,000 a month, and she alleges that since then, by their joint prudent management, he has become worth \$10,000,000 more, and his income has increased to \$100,000 a month. A reasonable allowance for her support, which she might claim from him by virtue of that contract of marriage, if genuine and valid, would greatly exceed the amount required for the jurisdiction of the court. Again, the contract, if genuine and valid, placed her in a position to claim her rights to a portion of the community property; that is, property acquired by the earnings of both since its date. She alleges in the state suit that such earnings amounted to \$10,000,000, and if so, under the law, as his wife, she would be entitled to one-half thereof on his decease, against any attempted testamentary disposition.

Again, the contract, if genuine and valid, gave her an inchoate right of dower in the real property, which he then possessed in the District of Columbia, amounting in value to \$300,000. That right, though to be enjoyed only in case of her surviving him, had a present substantial value, capable of pecuniary appraisement, and of which he could not deprive her by any conveyance of the property without her joining with him.

Suits to cancel forged contracts, such as a forged deed, are of common occurrence. What is the value of the instrument in controversy in such cases? If it be forged, its actual value is nothing; but, for purposes of jurisdiction over it by the court, it must be held to have, to the rightful owner of the property, the value of the property, the possession and enjoyment of which is imperiled by it. That

such is the general understanding of the profession we have no doubt, for we can find no case where jurisdiction of the court has been denied, in the multitude of instances where it has been invoked, because such instrument is incapable of pecuniary estimation. It is everywhere assumed that the property which could be affected by it, if genuine, is the 'measure of its value for the purposes of jurisdiction. We might also refer, in support of this view, to that branch of equity jurisdiction which is exercised in discovering testimony or perpetuating it. What is the measure of value in such cases? Clearly, for purposes of jurisdiction, it must be estimated with reference to the value of the property in relation to which it is desired to discover or perpetuate the testimony. A court of equity having jurisdiction to lay its hands upon and control forged and fraudulent instruments, it matters not with what pretensions and claims their validity may be asserted by their possessor, whether they establish a marriage relation with another, or render him an heir to an estate, or confer a title to designated pieces of property, or create a pecuniary obligation. It is enough that unless set aside, or their use restrained, they may impose burdens upon the complaining party, or create claims upon his property by which its possession and enjoyment may be destroyed or impaired.

The third objection that the bill does not specifically describe the property of the deceased is without force. The records shows that he possessed a large and valuable property, the right to portions of which would be affected by the alleged contract, if genuine and valid.

As to the fourth objection, both the original bill and this one have the same object, to revive the original decree and enforce its execution; the latter being necessary because the trustees and beneficiaries under the trust deed take by a title which may be contested, and not like the executor by operation of law.

But purchasers and devisees, by an original bill, in the nature of a bill of revivor, may draw to themselves the advantages of the former suit, in whatever stage it may be

at the time of the abatement. To the alleged abatement of the original suit, by the transfer of the decedent's property, there are three answers, each of which is complete. In the first place, the reservations in the trust deed of power in the grantor to claim during his life the payment of the net income, rents, issues and profits of the property remaining after certain monthly payments to his children, and to his son-in-law for his grandchildren, continued in him sufficient interest in the property to maintain the suit to cancel a forged document which might lessen the amount of such income, rents and profits. In the second place, the decree, having been entered as of September 29, 1885, was, with reference to the trust deed subsequently executed, as though the decree had been announced by the court as of that day. In the third place, the deed of trust having been made *pendente lite*, the trustee and beneficiaries took subject to the decree which might be subsequently rendered. The suit being to revoke and cancel an instrument which might otherwise lessen the value of the estate, and having been heard and submitted for decision, it is to be presumed, in the absence of any application by the trustee and beneficiaries to be substituted as plaintiffs, that they desired that the case should be held for such determination in their interest. While they might properly have asked to be joined with the plaintiff, they were not bound to do so. The court had jurisdiction to proceed without them to render the decree.

Having disposed of these questions of jurisdiction—

Mrs. Terry. Judge, are you going to take the responsibility of ordering me to give up that marriage contract?

MR. JUSTICE FIELD. Take your seat madam.

Mrs. Terry. How much did you get for that decision? You have been paid by Newlands.

MR. JUSTICE FIELD. Marshal, remove that woman from the court-room and the Court will deal with her hereafter.

Mrs. Terry. I won't go out and you can't put me out.

Marshal Franks proceeded to remove her—

Mrs. Terry (striking him in the face). You dirty scrub. You dare not remove me from this court-room.

Judge Terry (rising from his chair). Don't touch my wife; get a written order.

Marshal Franks. Judge, stand back, I have order enough, no written order is required.

Judge Terry (as the Marshal took hold of Mrs. Terry's arm). No *** damn man shall touch my wife (striking the Marshal a blow in the face.) Here he endeavored to draw a bowie knife but was overpowered by the deputy marshals and forced to the floor while his wife was removed from the room, scratching and striking the officers, denouncing and threatening them and the judges, charging that they had stolen her jewelry and calling on one of her attorneys to give her her satchel in which she had a revolver.

Judge Terry being allowed to rise, he drew a knife, exclaiming, "Let go, let go, you sons of * * * I will cut you to pieces; I will go to my wife." He was again overpowered, the knife taken from him and he also was removed from the court-room.

As I was saying when interrupted, the next question is as to how far the judgment heretofore entered in this court is affected by the judgment in the State Court? William Sharon, being a citizen of Nevada, had a constitutional right to ask the decision of the federal court upon the case presented by him, and it would be a strange result if the defendant, who was summoned there, could, by any subsequent proceedings elsewhere, oust that court of its jurisdiction and rightful authority to decide the case. The constitution declares that the judicial powers of the United States shall extend to controversies between citizens of different states,—a provision which had its origin in the impression that local attachments and prejudices might injuriously affect the administration of justice in the state courts against the claims of citizens of other states. *Railway Co. v. Whitton*, 13 Wall. 270, 289. So valuable has the right of citizens of other states than the one in which suits are brought against them to have their cases heard in a federal court always been regarded, that, at the very outset of the government, congress provided, and in different acts since has renewed the provision, that when a citizen of another state is sued in a state court, he may, upon proper application, accompanied by an offer of good and sufficient surety for entering copies of the proceedings and his appearance in the federal court, have the case

removed to that court, and tried or heard there; and all the acts of congress have declared that it shall be the duty of the state court in such a case to accept the surety, and to proceed no further in the cause. Any subsequent proceedings there are null and void, and will be so treated by the federal courts. As said by the supreme court, in *Railroad Co. v. Koontz*, (104 U. S. 14), it is well settled that, "when a sufficient case for removal is made in the state court, the rightful jurisdiction of that court comes to an end, and no further proceedings can properly be had there, unless in some form its jurisdiction is restored." As congress has made such careful provision to secure to citizens of other states a right to transfer to a federal court cases in which they are sued in state courts, and prohibited further proceedings therein after proper application is made for removal, it would be strange, we repeat, if a defendant properly summoned in the first instance into that court by a citizen of another state could cut off and practically nullify the latter's constitutional right to a hearing there by instituting a suit in a state court, which might involve in some of its phases a determination of the same matters. Such a pretension, as said in one of the authorities cited, cannot be tolerated. The jurisdiction of the federal court having attached, the right of the plaintiff to prosecute his suit to a final determination there cannot be arrested, defeated or impaired by any proceeding in a court of another jurisdiction. This doctrine we hold to be incontrovertible. It is essential to any orderly and decent administration of justice, and to prevent an unseemly conflict of authority, which could ultimately be determined only by superiority of physical force on one side or the other.

Where two judgments, relating to the same subject, are irreconcilable, both cannot be enforced. One or the other must give way, and the only reasonable test by which the superiority of one over the other is to be determined is that which is expressed in the authorities cited, that the court which first obtains jurisdiction of the subject and

parties must have the right to proceed to judgment. Having first acquired possession of the subject, it cannot be rightly ousted by subsequent proceedings in another court having no supervising or appellate authority. If the time of the rendition of the judgment, independently of the commencement of the suit, were to be the test, the superiority of judgment, as counsel well observe, would depend on mere accident or circumstances beyond the power of the court or parties; as one court may have a large calendar, and be blocked up with business, creating great delay in the disposition of causes, while the other court may have few causes, and those of minor importance, and thus be enabled to speedily dispose of them. It would give the latter court pre-eminence, because it is enabled, from paucity of cases, to dispose of its calendar at an earlier day, and might, as suggested, tend to an unseemly scramble of litigants to speed cases in the respective courts of their preference. The exceptions to the doctrine that priority of jurisdiction controls priority of decision, to which we have referred, and to which our attention has been called by counsel of the defendants, will be found on examination to range themselves under two classes: *First*, where the same plaintiff has asked in the different suits a determination of the same matter; as, for instance, where different obligations are issued upon the same transaction, which is attacked in each suit as fraudulent and illegal, and therefore vitiating the several obligations; or where the jurisdiction of a court of equity, as well as a court of law, is invoked by him with reference to the matter. Of course, a decision first rendered in either suit may be pleaded in the others. The plaintiff must abide the adjudication which he has sought. And, *second*, where the cases are upon contracts or obligations, which from their nature are merged in the judgment rendered, the subject upon which the first suit is founded having thus ceased to exist.

The case at bar is not within either of the excepted classes. The plaintiff has not invoked the jurisdiction of the state court, and the alleged marriage contract is not

one which in any sense of the rule was merged or could be merged in the judgment, any more than a deed, upon which title to real estate is asserted, is merged in a judgment in ejectment for the possession of the property. It was as much an outstanding and existing contract after the judgment of the state court as before, and was equally available for all purposes. But, aside from this, the doctrine of the excepted cases can have no application to cases instituted in a federal court by a citizen of another state, so as to give paramount authority to a judgment of a state court in a suit subsequently commenced against him, without defeating a most important right conferred upon him by the constitution and laws of the United State,—a result which can in no manner be accomplished either directly or indirectly.

The sixth objection of defendant's counsel is that the priority of jurisdiction of the federal court was waived by the stipulation to remand the case originally commenced in the state court, from the federal court to which it had been removed, back to the state court. This argument was made in the original suit and was held to be without force. A statement of the circumstances of the remanding is sufficient answer to the position. The case commenced in the state court by the alleged wife, Sarah Althea, against Sharon, praying that her alleged marriage be declared legal and valid, and then that a divorce be decreed, was removed on the application of the defendant therein to the federal court on the supposition that he had a right to have it heard there. The plaintiff therein denied that right on the ground that the subject-matter, being an action for a divorce, was not within the jurisdiction of the court, and moved to remand it back to the state court. The defendant's counsel appears to have come to the conclusion that her motion would be granted, and, instead of waiting for the order of the federal court to that effect, consented that the case might be remanded, and that is all there is of the alleged waiver. The consent waived no rights of priority by the original suit, nor in any respect affected its position.

It would be strange if the remanding of one action by consent should change or affect in any degree the jurisdiction of the court over another and different action, to which the consent made no reference. The position that the protection of the decree of the federal court was waived because the attention of the state court was not called to it, either on the motion for a new trial, or on the argument of the appeal in the supreme court, merits careful consideration. There is not, and certainly ought not to be, anything so unseemly as rivalry and contention between the courts of the state and the courts of the United States. Both have large and responsible duties in the administration of justice for the American people, and we are sure that neither has any desire to encroach upon the jurisdiction and rightful authority of the other. And yet, as both courts have on many subjects concurrent jurisdiction, it will sometimes happen that there will be conflict of decision between them, and then a proper respect for each other will induce both to seek a solution consistent with the just rights of the parties. We think, therefore, it would have been a proper proceeding for the plaintiff in the original suit—the defendant in the state court—to have called the attention of that court and of the supreme court of the state in some formal way to the decision and decree of the federal court, not for the purpose of changing any alleged rulings had in the state courts, but in order to secure a stay therein of all further proceedings in them. The whole controversy in the state court rested upon the alleged validity of the marriage contract, and this fact is fully set forth in its findings. The decree in the federal court adjudged that contract to be a forgery, and ordered its surrender and cancellation. If this decree be a final one, and the court had jurisdiction to render it, there can be no doubt that it should, when presented to the state courts, stay all proceedings therein. Those courts would only be called upon to give full faith and credit to it, not to reverse or review any of their rulings, but to act upon a fact, conclusive of the case, for the first time brought to

their attention. They would only be called upon to do what they would do upon official notice to them of any other fact which would conclude a pending controversy. If, for example, there should be brought to a *nisi prius* court, after a conviction of an accused party of murder, or before the supreme court of the state on appeal from the judgment, official notice that the convict had been pardoned subsequent to the conviction, the *nisi prius* court would not thereupon grant a new trial, or the supreme court reverse the judgment, but both courts might properly be called upon to stay all proceedings upon the conviction; and an order to that effect, reciting the pardon, might be made. So, too, if, while argument is going on upon the appeal, the supposed murdered man should walk into court and present himself, I think the court, though it might find no error in the ruling of the lower court, would readily find a way to stay execution of the judgment upon reciting the personal appearance of the supposed murdered man. So we think the decree of the federal court might have been officially presented to the state courts, and a stay of proceedings in the action there asked. But it was not obligatory upon the defendant in the state courts to present to them the federal decree. He might think proper to await the final action of those courts, and, if the judgment of the superior court should be ultimately sustained, present the federal decree to stay its enforcement. He might very well have deemed it wise to wait until the time to appeal from the federal decree had expired before calling upon the state courts to give effect to it in proceedings before them. The time to appeal did not expire until the 15th of January, 1888, after the motion for a new trial had been heard in the lower court, and the appeal had been heard and submitted in the supreme court. The decree was entered as of September 29, 1885, and was as effectual for all purposes as if it had been announced on that day, except where the rights of others may have been prejudiced thereby; and to prevent such prejudice in shortening the time to appeal, it must be deemed to have

commenced running only from the date of its actual entry. There was no effective appeal from the decree in the federal court taken during the statutory period. There was an attempt by the defendant to appeal, and an order was made allowing an appeal, but as this was before the case was revived the order was improvidently made, and was without any efficacy. Where a suit has abated by the death of the plaintiff after judgment, no appeal can be taken by the defendant until the case is revived. *McClane v. Boon*, 6 Wall. 244. The decree of the federal court, when revived, may be used to stay any attempted enforcement of the judgment of the state court. *Boynton v. Ball*, 121 U. S. 462, 7 Sup. Ct. Rep. 981.

The failure to present the decree to the state courts did not, therefore, in our opinion, lessen its efficacy, and will not prevent it when revived from being hereafter presented to them, and does not impair in any respect the power of this court to enforce its execution. The prohibition against the issue of an injunction by a court of the United States to stay proceedings in a state court is found in section 5 of the act of March 2, 1793 (1 St. 334), and has been continued in force ever since. It is now contained in section 720 of the Revised Statutes, with an exception relating to proceedings in bankruptcy, and is as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Notwithstanding the very general terms of the prohibition, with the single exception mentioned, it has been settled that it does not apply where the federal court has first obtained jurisdiction, or where, the state court having first obtained jurisdiction, the case has been removed to the federal court. In such cases the federal court may restrain all proceedings in a state court which would have the effect of defeating or impairing its jurisdiction. It extends only to cases in which the jurisdiction of the state

court has first attached. With its proceedings, then, no federal court can interfere by injunction.

We have thus gone over, with as much care as we have been able to give, the several objections of counsel to the jurisdiction of the circuit court of the United States to render the decree in the original suit of *Sharon v. Hill*, and we have no doubt of its complete and paramount jurisdiction over the subject-matter of the suit, and to render the decree entered. That decree was reached after an exhaustive examination of the proofs in the case, as shown by the elaborate opinions of the judges. Although there are some doctrines announced in the leading opinion to which we do not assent, and to one of which we have already referred, no one, we think, with a clear judgment, unaffected by passion, can read and study its masterly analysis and presentation of the testimony without being convinced that the court had abundant reasons for its conclusions. The learned counsel for the defendants for once, contrary to his general habit, has been led by his zeal beyond the limits of proper discussion in declaring to the court which rendered the decree that it is "an ineffective, inoperative, unenforceable *pronunciamiento*." Being, upon the matters embraced by it, in our judgment, binding and conclusive, it must be enforced in all its parts until the only tribunal in this country which can control and stay it—the supreme court of the United States—has determined otherwise. That tribunal is lifted far above all prejudices, passions and attachments, and will adjudge without any such influences what is just and right in the controversy, so far as that is attainable in our system of government. We have endeavored to discuss the questions presented purely as legal questions, without reference to or comment upon the evidence in the cases; yet, as counsel have referred to the different manner in which the testimony was given in the two courts,—that in the state court by the witnesses in open court, and that in the federal court by depositions before an examiner in chancery,—as though for this reason the conclusions of the state court

were entitled to greater consideration than those of the federal court, we have read with care the opinion of the state court. The testimony is such that weight is to be attached to it more from its character and intrinsic nature than from the manner in which it was given. The great question in both was the genuineness of the alleged marriage contract; the holder, Sarah Althea, affirming its genuineness, and the alleged signer, William Sharon, asseverating its forgery. Both have accompanied their statements with their oaths. Both have not testified to the truth. There is falsehood on one side or the other. The burden of proof was on her, and the learned judge of the state court often speaks of testimony offered by her in terms of condemnation. In one passage he says of certain testimony given by her:

"This is unimportant, except that it shows a disposition, which crops out occasionally in her testimony, to misstate or deny facts when she deems it of advantage to her case."

Again, with respect to alleged introductions of her to several persons as the wife of Sharon, the judge says:

"Plaintiff's testimony as to these occasions is directly contradicted, and in my judgment her testimony as to these matters is willfully false."

As to her testimony that she advanced to Sharon in the early part of her acquaintance \$7,500, the judge says:

"This claim, in my judgment, is utterly unfounded. No such advance was ever made."

Again the court said:

"The plaintiff claims that the defendant wrote her notes at different times after her expulsion from the Grand Hotel. If such notes were written, it seems strange that they have not been preserved and produced in evidence. I do not believe she received any such notes."

Again, a document purporting to be signed by Sharon was produced by her, explaining why she was sent from the Grand Hotel in the fall of 1881, and also acknowledging that the money he was then paying her was part of \$7,500 she had placed in his hands. The production of

the paper for inspection was vigorously resisted, but it was finally produced. At a subsequent period, when called for, it could not be found. Of this paper the judge said:

"Among the objections suggested to this paper, as appearing on its face, was one made by counsel that the signature was evidently a forgery. The matters recited in the paper are, in my judgment, at variance with the facts which it purports to recite. Considering the stubborn manner in which the production of this paper was at first resisted, and the mysterious manner of its disappearance, I am inclined to regard it in the light of one of the fabrications constructed for the purpose of bolstering up plaintiff's case. I can view the paper in no other light than as a fabrication."

There are several other equally significant and pointed passages expressive of the character of the testimony produced in support of her case. Of what she attempted, the judge thus speaks:

"I am of the opinion that to some extent plaintiff has availed herself of the aid of false testimony for the purpose of giving her case a better appearance in the eyes of the court; but sometimes parties have been known to resort to false testimony where, in their judgment, it would assist them in prosecuting a lawful claim. As I understand the facts of this case, that was done in this instance."

Notwithstanding this characterization of parts of her testimony, the genuineness of the alleged marriage contract rests to a great extent upon her testimony. It would seem that the learned judge reached his conclusions without due regard to a principle in the weighing of testimony, as old as the hills, and which ought to be as eternal in the administration of justice, that the presentation knowingly of fabricated papers or false evidence, to sustain the story of a party, throws discredit upon his whole statement. It is generally deemed equivalent to an admission of the falsity of the whole claim.³² We have referred to the opinion of the state judge merely on account of the claim that his conclusions, because he had the witnesses before him, and because of the alleged defective machinery for taking testimony in the federal courts are entitled to more

³²*Deering v. Metcalf*, 74 N. Y. 501, 506; *Railway Co. v. McMahon*, 103 Ill. 485; *Egan v. Bowker*, 5 Allen, 449; Code Civil Proc. § 2061; *Starkie*, Ev. 873.

consideration than the opposite conclusions reached by the federal judges after a most thorough and exhaustive examination.

The judgment of this court is that the demurrers in both cases be overruled; that in the first case the original suit of William Sharon against Sarah Althea Hill, now Sarah Althea Terry, and the proceedings and final decree therein, stand revived in the name of Frederick W. Sharon, as executor, and against Sarah Althea Terry and David S. Terry, her husband; the said executor being substituted as plaintiff in the place of William Sharon, deceased, and the said David S. Terry being joined as defendant with his wife, so as to give to the said plaintiff, executor as aforesaid, the full benefit, rights and protection of said final decree, and full power to enforce the same against the said defendants, at all times, and in all places, and in all particulars. In the second case, that of Francis G. Newlands, trustee, and others, beneficiaries under the trust deed, the defendants will have leave to answer until the next rule-day. Appropriate orders in conformity with this decision will be entered in the respective cases.³³

THE FOURTH TRIAL.³⁴

*In the United States Circuit Court, San Francisco.
California, 1888.*

HON. STEPHEN J. FIELD,³⁵ *Presiding Justice.*

HON. LORENZO SAWYER,³⁶ *Circuit Judge.*

HON. GEORGE M. SABIN,³⁷ *District Judge.*

September 3.

MR. JUSTICE FIELD: The Clerk will enter the following orders:

³³On appeal to the Supreme Court of the United States, that tribunal on May 13, 1889, affirmed the judgment of the Circuit Court. *Terry v. Sharon*, 9 S. C. Rep. 705.

³⁴Bibliography. See ante p. 470.

³⁵Ante p. 470.

³⁶Ante p. 470.

³⁷Ante p. 470.

On this day while said court was engaged in its regular business, hearing and determining causes pending before it, one Sarah Althea Terry was guilty of misbehavior in the presence and hearing of said court; and whereas, said court thereupon duly and lawfully ordered the United States marshal, J. C. Franks, who was then present, to remove the said Sarah Althea Terry from the court-room; and whereas, the said United States marshal then and there attempted to enforce said order, and then and there was resisted by one David S. Terry, an attorney of this court, who, while the said marshal was attempting to execute said order, in the presence of the court, assaulted the said United States marshal, and then and there beat him, the said marshal, and then and there wrongfully and unlawfully assaulted said marshal with a deadly weapon, with intent to obstruct the administration of justice, and to resist such United States marshal, and the execution of the said order; and whereas, the said David S. Terry was guilty of a contempt of this court by misbehavior in its presence, and by a forcible resistance in the presence of the court to a lawful order thereof in the manner aforesaid: Now, therefore, be it ordered and adjudged by this court that the said David S. Terry, by reason of said acts, was and is guilty of contempt of the authority of this court, committed in its presence on this the 3d day of September, 1888; and it is further ordered that said David S. Terry be punished for said contempt by imprisonment for the term of six months; and it is further ordered that this judgment be executed by imprisonment of the said David S. Terry in the county jail of the county of Alameda, in the state of California, until the further order of this court, but not to exceed said term of six months; and it is further ordered that a certified copy of this order, under the seal of the court, be process and warrant for executing this order.

A similar order will be entered for the contempt committed by Sarah Althea Terry, in using boisterous language and insulting and scandalous, in asking the presiding justice how much he was paid for his opinion and in resisting the order of the court that she be removed from the room, except that her imprisonment at the same place shall be for the term of thirty days.

September 12.

The following petition was presented by *S. Heydenfelt*³⁸ and *John A. Stanley*,³⁹ attorneys for the prisoner.

³⁸HEYDENFELT, SOLOMON (1816-1890). Born Charleston, S. C. Grad. at a Pa. College; studied law at Charleston and admitted to Alabama Bar, 1837. Removed to California, 1850. Practised law in San Francisco for many years and died there. Judge Supreme Court (Cal.) 1852-1857.

³⁹See ante p. 563.

The petition of David S. Terry respectfully represents: That he did not intend to say or do anything disrespectful to the Court or judges; that he endeavored to quiet his wife and he rose from his seat to help remove her; that he never struck or offered to strike an officer until they had assaulted both himself and his wife. He solemnly avers that he neither drew or attempted to draw any deadly weapon of any kind whatever in said court-room, and that he did not assault or attempt to assault the United States marshal, with any deadly weapon in said court-room or elsewhere. He respectfully represents that after he had left said court-room he heard loud talking in one of the rooms of the United States marshal, and among the voices proceeding therefrom he recognized that of his wife, and he thereupon attempted to force his way into said room through the main office of the United States marshal; the door of this room was blocked with such a crowd of men that the door could not be closed; that he then for the first time drew from inside his vest a small sheathknife, at the same time saying to those standing in his way in said door that he did not want to hurt any one; that all he wanted was to get in the room where his wife was. The crowd then parted, and he entered the doorway, and there saw a United States deputy-marshal with a revolver in his hand pointed to the ceiling of the room. Some one then said, 'Let him in, if he will give up his knife,' and he immediately released hold of the knife to some one standing by. In none of these transactions did he have the slightest idea of showing any disrespect to this honorable court, or any of the judges thereof. That he lost his temper, he respectfully submits was a natural consequence of himself being assaulted when he was making an honest effort to peaceably and quietly enforce the order of the court so as to avoid a scandalous scene, and of his seeing his wife so unnecessarily assaulted in his presence. Wherefore he respectfully requests that this honorable court may, in the light of the facts herein stated, revoke the order made herein committing him to prison for six months.

Mr. STANLEY quoted authorities to the effect that a disavowal on oath of any disrespect to the Court purges that contempt and entitles the offending party to be discharged.

THE EVIDENCE.

J. C. Franks. I am United States Marshal for the Northern District of California. On Sept. 3, I was in the Court room. While Judge Field was reading his decision in the case of Sha-

ron *v.* Terry, Judge Terry and his wife, Mrs. Terry, sat at the large table for attorneys in front of the railing around the clerk's desk, to my left. Judge Field had read for a few minutes,

when Mrs. Terry stood up, interrupting the court, said, among other things, "You have been paid for this decision." Judge Field then ordered her to keep her seat, but she continued, saying, "How much did Newlands pay you?" Then Judge Field said, "Mr. Marshal, remove that woman from the court-room." Mrs. Terry said in a very defiant manner, "You cannot take me from the court." I immediately stepped to my left to execute the order, passing Judge Terry. Mrs. Terry sprang at me, striking me in my face with both her hands, saying, "You dirty scrub, you dare not remove me from this court-room," before I had touched her. I moved to take hold of her when Judge Terry threw himself in my way, and, unbuttoning his coat, said, in a most defiant and threatening manner, "No man shall touch my wife; get a written order," or words to that effect. I put out my hand towards him, saying, "Judge, stand back; no written order is required;" as I was taking hold of Mrs. Terry's arm, Judge Terry struck me a hard blow in my mouth, with his right fist, breaking one of my teeth; I immediately let his wife go, and pushed him back. He then put his right hand in his bosom. Deputy Farish, Detective Finnegass, and other citizens, caught him by the arms, and pulled him down in his chair. I caught hold of Mrs. Terry again, and with Mr. N. R. Harris, one of my deputies, we took her out of the court-room into my office; she resisting, scratching, and striking me all the time, using

violent language, denouncing and threatening the judges and myself, claiming that I had stolen her diamonds and bracelets from her wrists, and calling several times to Porter Ashe to give her her satchel. I used no more force than was necessary, considering the resistance made by her, addressing her as politely as possible. I left her in charge of Mr. Harris, went into the main office, saw a body of men scuffling at the door, heard Deputy-Marshal Taggart say, "If you attempt to come in here with that knife, I will blow your brains out." I said, "What, has he a knife?" Deputy Farish answered, and said, "He had a knife, but we took it away." I took hold of Judge Terry, and, with assistance of others, pulled him in the main office, and shut the door. I had him and his wife placed in my private office in charge of Deputy-Marshals Harris, Donnelly, and Taggart. I then went into the court-room, and when I had been in there but a short time, Mr. Farish came in and said, "Mrs. Terry wants her satchel, which Porter Ashe has." Found Mr. Ashe with the satchel. I requested him to hand it to me. At first he refused, saying it was Mrs. Terry's private property, and he was going to deliver it to her. Told him she was my prisoner, and her effects should be in my custody, and if he did not give the satchel up I would place him under arrest. He then gave it to me, and I told him to come with me into my office, and I would open it in his presence. He did so, and I opened it, and took a pistol therefrom,—a self-

cocking 41 caliber Colt's pistol, with five chambers loaded, the sixth being empty,—after which I delivered the satchel to Mrs. Terry. Mr. Ashe then said he did not intend to give the satchel to her with the pistol in it. I have here a photograph of the bowie-knife taken from the hands of Judge Terry by a citizen, with the assistance of my officers, and handed to me by the citizen, and also a photograph of the pistol taken from Mrs. Terry's satchel, both photographs exhibiting the actual size of these weapons. I noticed Judge Terry and his wife during the reading of the opinion; and, as some points were being decided against them, I carefully observed them before I commenced to remove Mrs. Terry from the courtroom; and there was no word or act that I observed on the part of Judge Terry to restrain his wife in her conduct, or to take her from the court-room, or to assist me in doing so. On the contrary, Judge Terry resisted me with violence, as I have stated. After Judge Terry was placed in my inner office, as I have above stated, he used very abusive language concerning the judges, referring to Judge Sawyer as 'that corrupt son of a * * *,' and also saying, "Tell that bald-headed old son of a * * *, Field, that I want to go to lunch;" and after the order was made committing him six months for contempt, Judge Terry said: "Field thinks that when I get out, he will be away; but I will meet him when he comes back next year, and it will not be a very pleasant meeting for him." Mrs.

Terry said several times that she would kill both Judges Field and Sawyer.

Henry Finnegass: Am a citizen of the United States, over 45 years of age and agent of the secret service division of the United States Treasury department for the Pacific coast; also deputy U. S. marshal. Was present in the Court room of the United States Circuit Court on September 3, 1888. Judge Field had proceeded with the reading of the opinion for twenty minutes when he was interrupted by Mrs. Terry rising and saying, "Judge are you going to take the responsibility of ordering me to deliver up that marriage contract?" Judge Field immediately said, "Take your seat Madam." Mrs. Terry retorted, "How much did you get for that decision? You have been bought by Newlands." The Judge then said "Marshal, remove that woman from the court-room and the court will deal with her hereafter." Mrs. Terry was standing almost immediately in front of Judge Field at the table near the railing outside of the clerk's desk. She sat down, saying in a loud voice and indignant and insulting manner, "I won't go out and you can't put me out" and other words to that effect. The marshal walked around behind Judge Terry towards Mrs. Terry. Judge Terry rose to his feet saying, "Don't touch my wife—get a written order." The marshal replied that he had order enough. Then Judge Terry said, "No God damn man shall touch my wife;" and he tried to get between the marshal and his wife. The mar-

shal went to take hold of Mrs. Terry's arm, when Judge Terry drew back and struck him with his right fist a severe blow on the face. The marshal then pushed Judge Terry with his hands. Then Judge Terry unbuttoned his coat, and thrust his right hand into his bosom. I sprang towards him, and caught him by the right arm, and pulled his hand away from his vest, and pulled him back on a chair. Two other men took hold of him at the same time and we held him down. He was swearing all the time, saying, "God damn you, let me up; you sons of * * *, let me up;" and other exclamations of that character. We held him there until his wife was taken forcibly out of the room by Marshal Franks and his assistant. Then we let Terry up, and I went up with him to near the swinging doors connecting the court-room with the passage-way leading into the corridor. In the court-room, I released my hold of Judge Terry's right arm, and let go of him, and he went through the door, and I held one side of the door open with my left hand, and this door was not closed until Judge Terry had drawn his bowie-knife, and was brandishing it in the passage-way leading to the corridor. I heard some one say, "Look out, he's got a knife." Let go the swinging door and ran out, and caught him in the said passage-way by the right arm, in which he held his knife, and at the same instant a deputy-marshal by the name of Farish caught hold of Judge Terry. He violently resisted us, and we struggled from the pass-

age-way into the corridor, and across the corridor into the door leading into the marshal's office. During this time Judge Terry shouted loudly, using such exclamations as "Let go, let go, you sons of * * *; I will cut you into pieces; I will go to my wife." We struggled into the space before the counter in the marshal's office, where we took Judge Terry's knife from him. I loosed some of his fingers, and Deputy-Marshal Farish loosed some, and a man standing by pulled the knife from Judge Terry's hand. The knife, including the handle, is $9\frac{1}{4}$ inches long, the blade being five inches long, having a sharp point, and is what is commonly called a "bowie-knife." Immediately after Marshal Franks came out from his inner office, where he had placed Mrs. Terry, and said, "Has he got a knife?" Deputy Farish replied, "He did have one, but it has been taken away from him." The marshal allowed Judge Terry to go in and join his wife in the marshal's inner office, and he was there detained. Went back into the court-room, and remained during the reading of the opinion. Terry's conduct throughout this affair was most violent. He acted like a demon; and all the time while in the corridor, and before the counter of the marshal's office, he used loud and violent language, which could be plainly heard in the court-room, and, in fact, throughout the building. Mrs. Terry resisted with all her power the efforts of the marshal in taking her from the court-room, and he was compelled to remove her forcibly. While be-

ing removed she screamed and shouted her abuse of the judges, saying they had been bought, and so forth; and also abused Marshal Franks, calling him a hireling, paid to do his dirty work, and words to that effect.

A. L. Farish. Am a Deputy-Marshal. After Mr. Franks had gone out with Mrs. Terry, we released our hold on Terry and he rushed out of the court-room. I followed close after him, and I noticed he had a bowie-knife in his hand. I grappled with him, and caught his hand; Detective Finnegass seizing him at the same time. He struggled, and tried to get his hands free, swearing and threatening all the time. We struggled till we got to the outer door leading into the marshal's rooms, when Judge Terry, getting his knife into his left hand, which was disengaged, (I and others having hold of his right,) raised it above our heads, and with some expression I could not exactly understand said, in effect, "I will cut you in pieces." I jumped back, and as he turned to go in the office, I cried out to shut the door, at the same time catching his arm, and with the assistance of Mr. Finnegass and another party, a stranger to me, we took the knife from him just as he was attempting to go in the inner door. I noticed Judge Terry closely during this affair, did not observe any act or word on his part to restrain Mrs. Terry, after the order was made to remove Mrs. Terry, in what she was doing, or to have her go from the court-room; on the contrary, Judge Terry resisted the marshal, as I have stated. The mar-

shal treated Mrs. Terry in every manner and respect politely and courteously.

N. R. Harris. Am a Deputy-Marshal. Was closely observing Judge Terry and his wife when she interrupted Judge Field; saw Mrs. Terry say something to Judge Terry, to which he nodded, as if assenting to what she had said. Immediately Mrs. Terry rose to her feet, and commenced talking. Judge Terry did not attempt in any way to stop Mrs. Terry, or prevent her from doing what she did, as I have above stated.

W. W. Presbury. Am a Deputy-Marshal. Judge Terry, having been released from the grasp of those who held him, proceeded toward the door, feeling apparently for something within his waistcoat. I stepped to his side, and saw that he was drawing from his bosom a large knife, which he fairly exposed just inside of the court-room door. On emerging from the door he held the knife above his head, saying, "I am going to my wife." I walked beside him until he reached the outside door of the marshal's office, where his further progress was prevented by Chief Deputy Farish and two or more of the marshal's deputies, together with Detective Finnegass and others. After a struggle the knife was taken from him, and he was permitted to join his wife in the marshal's room. He remained there until an order was received from the court committing him and his wife to jail, whereupon they were taken from the building by the marshal and his deputies.

David Neagle, Benjamin F. Bo-

hen, William Glennon, Thomas ding, who were also eye-wit-
B. Van Buren, J. H. Miller, Al- *nesses to the affair, testified to*
fred Barstow and Joseph Red- *the same effect.⁴⁰*

MR. JUSTICE FIELD: Shortly before the court opened the defendants came into the court-room, and took their seats within the bar at the table next to the clerk's desk, and almost immediately in front of the judges; the defendant, David S. Terry, being at the time armed with a bowie-knife concealed on his person, and the defendant, Sarah Althea, his wife, carrying in her hand a small satchel, which contained a revolver of six chambers, five of which were loaded. The court at the time was held by the justice of the Supreme Court of the United States assigned to this circuit, who was presiding; the United States circuit judge of this circuit, and the United States district judge of the district of Nevada, called to this district to assist in holding the circuit court. Almost immediately after the opening of the court the presiding justice commenced reading its opinion in the cases mentioned, but had not read more than one-fourth of it when the defendant Sarah Althea Terry arose from her seat, and asked him, in an excited manner, whether he was going to order her to give up the marriage contract, to be canceled. The presiding justice replied, "Be seated, madam." She repeated the question, and was again told to be seated. She then cried out in a violent manner that the justice had been bought, and wanted to know the price he held himself at; that he had got Newlands' money for his decision, and everybody knew it—or words to that effect. It is impossible to give her exact language. The judges and parties present differ as to the precise words used, but all concur as to their being of an exceedingly vituperative and insulting character. The presiding justice then directed the marshal to remove her from the court-room. She immediately exclaimed that she would not go

⁴⁰This testimony was all by affidavit made and subscribed to by the witnesses according to the practise in Courts of Equity.

from the room and that no one could take her from it, or words to that effect. The marshal thereupon proceeded towards her to carry out the order for her removal, and compel her to leave, when the defendant David S. Terry rose from his seat, evidently under great excitement, exclaiming, among other things, that, "No living man shall touch my wife," or words of that import, and dealt the marshal a violent blow in his face. He then unbuttoned his coat, and thrust his hand under his vest, where his bowie-knife was kept, apparently for the purpose of drawing it, when he was seized by persons present, his hands held from drawing his weapon, and he himself forced down on his back. The marshal then removed Mrs. Terry from the court-room. Soon afterwards Mr. Terry was allowed to rise, and was accompanied by officers to the door leading to the corridor, on which was the marshal's office. As he was about leaving the room, or immediately after stepping out of it (and it is immaterial which), he succeeded in drawing his knife, when his arms were seized by a deputy-marshal and others present, to prevent him from using it, and they were able to wrench it from him only after a violent struggle. The affidavits of officers of the court and others present, filed herewith, detail the facts. For their conduct and resistance to the execution of the order of the court, the defendants, Sarah Althea Terry and David S. Terry, were adjudged guilty of contempt, and ordered to be imprisoned; the former for thirty days, and the latter for six months. The commitment of Terry recited the contemptuous conduct of Sarah Althea, and the order of the court directing the marshal to remove her from the court-room, and that, while the marshal was attempting to execute the order, the said David S. Terry assaulted him in the presence of the court, and beat him; and also that said Terry wrongfully and unlawfully assaulted the marshal with a deadly weapon, with intent to obstruct the administration of justice. There were two matters recited for which Terry was adjudged

guilty of contempt: *First*, resisting the marshal in the execution of the order, and beating him; and, *second*, unlawfully assaulting the marshal with a deadly weapon.

Section 725 of the Revised Statutes defines the powers of the courts of the United States in matters of contempt. It declares that:

“the said courts shall have power * * * to punish by fine or imprisonment, at the discretion of the court, contempts of their authority: provided, that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice; the misbehavior of any of the officers of said court in their official transactions; and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.”

As thus seen, contempts embrace three classes of acts: *First*, the misbehavior of any person in the presence of the courts, or so near thereto as to obstruct the administration of justice; *second*, the misbehavior of any of the officers of the court in their official transactions; and, *third*, the disobedience or resistance by any such officer, or by any party, juror, witness or other person to any lawful writ, process, order, rule, decree or command of the courts. The misbehavior of the defendant David S. Terry, in the presence of the court, in the court-room, and in the corridor, which was near thereto, and in one of which (and it matters not which), he drew his bowie-knife, and brandished it, with threats against the deputy of the marshal and others aiding him, is sufficient of itself to justify the punishment imposed. But, great as this offense was, the forcible resistance offered to the marshal in his attempt to execute the order of the court, and beating him, was a far greater and more serious affair. This resistance and beating of its officer was the highest possible indignity to the government. When the flag of the country is fired upon and insulted, it is not the injury to the bunting, the linen or silk on which the stars and stripes are stamped which startles

and arouses the country. It is the indignity and insult to the emblem of the nation's majesty which stirs every heart, and makes every patriot eager to resent them. So the forcible resistance to an officer of the United States in the execution of the process, orders and judgments of their courts is in like manner an indignity and insult to the power and authority of the government, which can neither be overlooked nor extenuated.

The defendant, David S. Terry, now prays the court to revoke the order committing him. In his petition he sets forth that in the transactions in the circuit court on the 3d instant, upon which his commitment was made, he did not intend to say or do anything disrespectful to the court or to the judges thereof, or to any one of them. He alleges that when his wife first arose from her seat, and before she had uttered a word, he used every effort in his power to cause her to resume her seat, and to remain quiet, and that he did nothing to encourage her in what he terms "her acts of indiscretion." That when the order for her removal from the court-room was made, he rose from his seat for the purpose of removing her himself, quietly and peaceably, and had no intention of disturbing or preventing the execution of the order of the court. That he never struck, or offered to strike, the marshal until the marshal had assaulted him, and had, in his presence, violently, and, as he believed, unnecessarily, assaulted his wife. That he neither drew, nor attempted to draw, any deadly weapon, of any kind in the court-room, and that he did not assault, or attempt to assault, the United States Marshal with any deadly weapon, in the court-room or elsewhere. He represents that after he had left the court-room he heard loud talking in one of the rooms of the marshal, and among the voices proceeding therefrom he recognized that of his wife; that he then attempted to force his way into that room, and, finding it barred by a crowd of men, so that the door could not be closed, he, for the first time, drew from inside his vest a small sheath-knife, at the same time saying to

the crowd standing in his way, that he did not want to hurt anyone, but that all he wanted was to get into the room where his wife was; that the crowd then parted, and he entered the doorway, where someone said, "Let him in, if he will give up his knife;" and he then immediately gave up his knife. The petitioner further alleges that in none of these transactions did he have the slightest idea of showing any disrespect to the court or to any of its judges, and that the fact that he lost his temper was a natural consequence of his being himself assaulted, when he was making an honest effort to enforce the order of the court, and of his seeing his wife assaulted in his presence. Upon this statement he asks the revocation of the order committing him to prison.

We have read this petition with great surprise at its omissions and misstatements. As to what occurred under our immediate observation, its statement does not accord with the facts as we saw them; as to what occurred at the further end of the room, and in the corridor, its statement is directly opposed to the concurring accounts of the officers of the court and parties present, whose position was such as to preclude error in their observations. According to the sworn statement of the marshal, which accords with our own observation, so far from having struck or assaulted Terry, he had not even laid his hands upon him when the violent blow in the face was received. And it is clear beyond controversy that Terry never voluntarily surrendered his bowie-knife, and that it was wrenched from him only after a violent struggle. We can only account for his misstatement of facts as they were seen by numerous witnesses by supposing that he was in such a rage at the time that he lost command of himself, and does not well remember what he then did, or what he then said. Some judgment as to the weight this statement should receive, independently of the incontrovertible facts at variance with it, may be formed from his speaking of the deadly bowie-knife he drew as a small sheath-knife, and of the shameless

language and conduct of his wife as "her acts of indiscretion." No one can believe that he thrust his hand under his vest where his bowie-knife was carried without intending to draw it. To believe that he placed his right hand there for any other purpose—such as to rest it after the fatigue of his violent blow in the marshal's face, or to smooth down his ruffled linen—would be childish credulity. But even his own statement admits the assaulting of the marshal, who was endeavoring to enforce the order of the court, and his subsequently drawing a knife to force his way into the room where the marshal had removed his wife. Yet he offers no apology for his conduct, expresses no regret for what he did, and makes no reference to his violent and vituperative language against the judges and officers of the court while under arrest, which is detailed in the affidavits filed. There is nothing in his petition which would justify any remission of the imprisonment. The law imputes an intent to accomplish the natural result of one's acts, and, when those acts are of a criminal nature, it will not accept, against such implication, the denial of the transgressor. No one would be safe if a denial of a wrongful or criminal intent would suffice to release the violator of law from the punishment due to his offenses. Why did the petitioner come into court with a deadly weapon concealed on his person? He knew that as a citizen he was violating the law which forbids the carrying of concealed weapons, and as an officer of the court—and all attorneys are such officers—was committing an outrage upon professional propriety, and rendering himself liable to be disbarred. *Sharon v. Hill*, 11 Sawy. 122, 24 Fed. Rep. 726. Therefore, considering the enormity of the offenses committed, and the position the petitioner once held in this state, which aggravates them to a degree not imputable to the generality of offenders, the court, with a proper regard to its own dignity, the majesty of the law, and the necessity of impressing upon all men that forcible resistance to the lawful orders of the courts of

the United States will not go unpunished, however high the offending parties, cannot grant the prayer of the petitioner; and it is accordingly denied.

JUDGES SAWYER and SABIN, concur.

On November 12 a writ of habeas corpus was asked on behalf of Terry of the Supreme Court of the United States and refused, that tribunal affirming the action of Mr. Justice Field. *Re Terry*, 9 S. C. Rep. 77.

THE TRIAL ON HABEAS CORPUS OF DAVID
NEAGLE FOR THE MURDER OF JUDGE
DAVID S. TERRY, SAN FRANCISCO,
CALIFORNIA, 1889.

THE NARRATIVE.

Judge Terry and his wife left the Alameda jail vowing vengeance against the judges of the United States Court and against Mr. Justice Field in particular. Even while confined there they had both declared that they would either kill him or subject him to such personal indignities that he would be obliged to resent them, which would give them a legal excuse for taking his life.¹

After her case had been argued before the three judges (see ante p. 470) and before the day it was decided, Judge Sawyer found himself on a railroad car in which the two Terrys were also riding. No sooner did the woman recognize the judge than she jumped up and pulled his hair with a vicious jerk, at the same time remarking to her husband, "I will give him a taste of what he will get by and by. Let him render his decision if he dares," to which her husband responded, "The best thing to do with him would be to take him out into the bay and drown him." And they continued these insults until the judge left the car. After their imprisonment their threats became more violent and vituperative. More than once Terry declared that Justice Field would not dare to return to California, that if he did he would horsewhip him the first time he met him and if he resented it he would shoot him; that the earth was not big enough for both of them; that he always carried a bowie knife; that judges and marshals were a lot of cowardly curs and that he would see some of them in their graves yet.

¹ T. T. Williams.

The threats of the Terrys were published in the newspapers of California, and it was the general opinion of the public that when Justice Field came to California again to attend to his judicial duties there he would of a certainty be attacked and probably killed by this brace of enemies. Mrs. Terry was now regarded as a desperate woman and half insane on the question of her lawsuit, and well aware that a sympathetic jury like that which acquitted Mrs. Fair² would be easily found to excuse her for anything she might do. And Judge Terry was a man of great strength and size, whose ideas were those of the days of the gold miners who habitually carried concealed weapons and believed in using them on whoever excited his anger and who had already murdered one man and attempted to murder another.³

Most men would have found some excuse for delaying their visit to so incongenial a clime. But Mr. Justice Field was not one to be deterred from doing what he deemed his duty by any consideration of personal discomfort or probable danger. So, in the early summer of 1889 he left Washington again to attend to his judicial duties in California. But in the interim the Federal authorities had taken steps to protect him on his journey and had appointed David Neagle⁴ as a special marshal to accompany him and to protect him against assault and violence.

On the afternoon of August 13, 1889, having heard and disposed of several cases in Los Angeles, he left that city for San Francisco, where several cases were to be heard by him. He was in a sleeping car and with him was David Neagle. During the night Terry and his wife boarded the train at the city of Fresno, where they resided. Neagle saw

² Ante p. 197.

³ See the Broderick duel and the Vigilance Committee Case, ante pp. 125-165.

⁴ He was a deputy Federal Marshal in San Francisco, and had a reputation as a brave officer. He had figured as a hero in Arizona among the "toughs" of that territory where he had served as Sheriff.

them and at once told the conductor of the situation, and the authorities at Lathrop, the station where in the morning the passengers would alight for breakfast, were notified. When they arrived at Lathrop, Neagle informed the Justice of the presence of the Terrys and advised him to have his breakfast served in the car. This the Justice refused to do, and both entered the dining-room and took seats side by side. In a short time the Terrys entered and the wife, recognizing Justice Field at once, went back to her car and took from it a satchel which contained a revolver. Terry, a moment after his wife left the room, got up from his seat at the table and, walking behind the Justice, struck him two heavy blows, one on each cheek. He then drew back and with his fist clenched was about to deal another blow when Neagle sprang to his feet and called out, a revolver in his hand, "Stop, stop, I am an officer," at the same time placing himself between the two. Terry appeared to recognize him and with a growl put his hand inside his vest for his bowie knife. The marshal did not hesitate, and in less than two seconds Judge Terry was stretched on the floor with two bullets in his heart, dead. As her husband sank to the floor Mrs. Terry entered, returned with the satchel in her hand, threw herself on his body with loud moans and declared that her husband had been murdered and called upon the bystanders to avenge her wrongs. Justice Field and Neagle continued their journey to San Francisco, but on the way the latter was arrested for the killing and taken from the train to the jail at Stockton.

That night, on the complaint of Mrs. Terry charging the Justice and the marshal with the murder of her husband, the Justice was convicted, but at once released by the order of the Governor of California.

The marshal, who was in the Stockton jail, obtained a writ of habeas corpus from the United States Court at San Francisco, which tribunal, after hearing all the evidence relating to the killing, ordered him to be released. The Court ruled that as he was engaged in the duty of guarding

a Federal Judge when the killing took place, the Federal Courts and not the State Courts had jurisdiction to try him. And that as it clearly appeared that he was justified in law in taking the life of Terry to preserve that of Justice Field, he was not guilty of homicide of any degree whatever.

THE TRIAL.⁵

*In the United States Circuit Court, San Francisco,
California, September, 1889.*

HON. LORENZO SAWYER,⁶ *Circuit Judge.*

HON. GEORGE M. SABIN,⁷ *District Judge.*

September 16.

On a charge of murder made on August 14, 1889, by Sarah A. Terry, before H. V. J. Swain, a Justice of the Peace for the town of Stockton, in the County of San Joaquin, Stephen J. Field and David Neagle were arrested and committed to the custody of the sheriff of the county on August 15. They were both charged with the murder of David S. Terry, within said county, on August 14. Stephen J. Field was at once released from the custody of the sheriff, and on August 16 a petition was presented to this court by David Neagle for a writ of *habeas corpus*, alleging that he was arrested and confined in prison for an

⁵ BIBLIOGRAPHY. "Some account of the work of Stephen J. Field as a Legislator, State Judge and Justice of the Supreme Court of the United States (by C. F. Black and S. B. Smith) with an introductory sketch by John Norton Pomeroy, LL.D. 1881, and an appendix containing the story of his attempted assassination by a former associate on the Supreme Bench of California, by Hon. George C. Gorham, 1895." Mr. Gorham was a life-long friend of Mr. Justice Field. He was his clerk when he was Alcalde in Marysville and afterwards clerk of the Federal Circuit Court in California. Afterwards removing to Washington, he became Secretary of the Senate, edited a newspaper, engaged in other literary work and wrote a biography of Edwin M. Stanton. And see ante p. 562.

⁶ Ante p. 470.

⁷ Ante p. 562.

act done by him in the performance of his duty, namely, the protection of Mr. Justice Field, and taken away from the further protection which he was ordered to give to him. The writ was issued and upon its return the sheriff of San Joaquin County produced a copy of the warrant issued by the justice of the peace of that county, and of the affidavit of Sarah A. Terry, upon which it was issued. A traverse to that return was filed alleging that an officer of the United States, specially charged with a particular duty, that of protecting one of the justices of the Supreme Court of the United States while engaged in the performance of his duty, could not, for an act constituting the very performance of that duty, be taken from the further discharge of his duty and imprisoned by the state authorities; and that when an officer of the United States in the discharge of his duties is charged with an offense consisting in the performance of those duties, and is sought to be arrested, and taken from the further performance of them, he can be brought before the tribunals of the nation of which he is an officer, and the fact there inquired into.

John T. Carey⁸, U. S. Dist. Att'y, Richard S. Mesick, Samuel M. Wilson⁹, William F. Herrin¹⁰, W. L. Dudley, C. L. Ackerman¹¹, J. C. Campbell¹² and H. C. McPike¹³ for petitioner.

⁸ CARY, JOHN T. Born Clay Co., Mo. His father settled in 1859 in Sacramento where his son was educated and admitted to the bar. Brig. Gen. Nat. Guard; U. S. Dist. Atty. N. D. Cal. 1886-1890.

⁹ WILSON, SAMUEL M. (1824-1892). Born Steubenville, Ohio, where he was educated, studied law and admitted to bar. Removed to Galena, Ill., 1845, where he practised law until 1853 when he removed to San Francisco. Practised there with great success until his death. Member Board of Freeholders 1880 and State Constitutional Convention 1878.

¹⁰ See ante p. 563.

¹¹ ACKERMAN, CHARLES LEWIS (1850-1909). Born New Orleans, La. Educated San Francisco public schools. Grad. Harv. Law School 1871; admitted San Francisco bar 1871; Judge Advocate General Cal. Nat. Guard. Died in San Francisco.

¹² CAMPBELL, JOSEPH CLAYBAUGH. Born, Oxford, Ohio, 1852; privately educated. Read law with his uncle, Joseph Claybaugh, Frankfort, Ind. Removed to California, 1876. District Atty. San

G. A. Johnson¹⁴, Atty. Gen., J. P. Langhorne¹⁵ and Avery C. White, Dist. Atty., for San Joaquin County.

Mr. Carey. Your Honors: I will read in evidence first the correspondence (which is admitted by counsel for the respondents) which led up to the appointment of the petitioner as deputy United States Marshal to attend and protect Mr. Justice Field while on his judicial duties:

"Department of Justice, Washington, April 27th, 1889. John C. Franks, United States Marshal, San Francisco, Cal.—Sir: The proceedings which have heretofore been had in connection with the case of Mr. and Mrs. Terry in your United States circuit court have become matter of public notoriety, and I deem it my duty to call your attention to the propriety of exercising unusual caution, in case further proceedings shall be had in that case, for the protection of his honor, JUSTICE FIELD, or whoever may be called upon to hear and determine the matter. Of course, I do not know what may be the feelings or purpose of Mr. and Mrs. Terry in the prem-

Joaquin County, 1877-1885; practised law in San Francisco. See *Who's Who on the Pacific Coast*, 1913.

¹³ MCPIKE, HENRY CLAY. Born, San Jose, Cal., 1857; educated Napa Coll. Institute, 1874; California Military Academy, Oakland, St. Helena and Vineland public schools, 1875; LL.B., Hastings Coll. of Law, 1881; Assistant U. S. Attorney N. District of California, 1886-1888. See *Who's Who on the Pacific Coast*, 1913. *San Francisco Directory*, 1913 (not in 1914).

¹⁴ JOHNSON, GEORGE ASBURY (1829-1894). Born, Salisbury, Md.; educated at academy there; removed to Newcastle, Ind.; grad. Yale, 1853; one of editors of Yale literary magazine. Prof. of Latin and Greek, West. Mil. Inst. of Ky., 1853; returned to Newcastle, 1854; studied law with Judge Elliott of Supreme Court and in the law dept. of State Univ.; removed to Chicago, Ill., and afterwards to Cambridge City, Ind., where he resided until 1874. Pres. City Council; Judge Circuit Court, 1867; removed to Santa Rosa, California, 1874, where he practised law in partnership with Barclay Henley until 1879. Mayor of Santa Rosa, 1878; member State Constitutional Conv., 1878; State Senator (Sonoma), 1882-1884; Atty.-Gen., 1887-1890; re-entered practice at Sacramento. See Yale Coll. Class of 1853-1883. Obituary record grad. Yale Univ. 1890-1900, p. 308. *San Francisco Call*, Sept. 21, 1894.

¹⁵ LANGHORNE, JAMES POTTER. Born, Princeton, N. J., 1854; educated in private school of Dr. J. C. Merillat near Baltimore, Md.; graduated Virginia Military Inst. 1875; B. L., Univ. of Va. law school, 1877. Moved to California, 1877; now practicing law in San Francisco. See *Who's Who on the Pacific Coast*, 1913. *San Francisco directory*, 1919.

ises, but many things which have happened indicate that violence on their part is not impossible. It is due to the dignity and independence of the court, and the character of its judge, that no effort on the part of the government shall be spared to make them feel entirely safe and free from anxiety in the discharge of their high duties. You will understand, of course, that this letter is not for the public, but to put you upon your guard. It will be proper for you to show it to the district attorney if deemed best. Yours truly, W. H. H. MILLER, Attorney General."

"United States Marshal's Office, Northern District of California, San Francisco, May 6, 1889. Hon. W. H. H. Miller, Attorney General, Washington, D. C.—Sir: Yours of the 27th ultimo at hand. When the Hon. Judge LORENZO SAWYER, our circuit judge, returned from Los Angeles, some time before the celebrated court scene, and informed me of the disgraceful action of Mrs. Terry towards him on the cars while her husband sat in front, smilingly approving it, I resolved to watch the Terrys, (and so notified my deputies,) whenever they should enter the courtroom, to be ready to suppress the very first indignity offered by either of them to the judges. After this, at the time of their ejection from the courtroom, when I held Judge Terry and his wife as prisoners in my private office, and heard his threats against Justice FIELD, I was more fully determined than ever to throw around the Justice and Judge SAWYER every safeguard I could. I have given the matter careful consideration, with the determination to fully protect the federal judges at this time, trusting that the department will reimburse me for any reasonable expenditure. I have always, whenever there is any likelihood of either Judge or Mrs. Terry appearing in court, had a force of deputies with myself on hand to watch their every action. You can rest assured that when Justice FIELD arrives he, as well as all the federal judges, will be protected from insults, and where an order is made it will be executed without fear as to consequences. I shall follow your instructions, and act with more than usual caution. I have already consulted with the United States attorney, J. T. Carey, Esq., as to the advisability of making application to you, at the time the Terrys are tried upon criminal charges, for me to select two or more detectives to assist in the case, and also assist me in protecting Justice FIELD while in my district. I wish the judges to feel secure, and for this purpose will see to it that their every wish is promptly obeyed. I notice your remarks in regard to the publicity of your letter, and will obey your request. I shall only be too happy to receive any suggestions from you at any time. The opinion among the better class of citizens here is very bitter against the Terrys, though, of course, they have their friends, and, unfortunately, among that class it is necessary to watch. Your most obedient servant, J. C. FRANKS, U. S. Marshal, Northern Dist. of Cal."

"San Francisco, Cal., May 7, 1889. Hon. W. H. H. Miller, U. S. Attorney General, Washington, D. C.—Dear Sir: Marshal Franks

exhibited to me your letter bearing date the 27th ult., addressed to him upon the subject of using due caution by way of protecting Justice FIELD and the federal judges here in the discharge of their duties in matters in which the Terrys are interested. I noted your suggestion with a great degree of pleasure, not because our marshal is at all disposed to leave anything undone within his authority or power to do, but because it encouraged him to know and feel that the head of our department was in full sympathy with the efforts being made to protect the judges, and vindicate the dignity of our courts. I write merely to suggest that there is just reason, in the light of the past and the threats made by Judge and Mrs. Terry against Justice FIELD and Judge SAWYER, to apprehend personal violence at any moment and at any place, as well in court as out of court, and that, while due caution has always been taken by the marshal when either Judge or Mrs. Terry is about the building in which the courts are held, he has not felt it within his authority to guard either Judge SAWYER or Justice FIELD against harm when away from the appraisers' building. Discretion dictates, however, that a protection should be thrown about them at other times and places, when proceedings are being had before them in which the Terrys are interested; and I verily believe, in view of the direful threats made against Justice FIELD, that he will be in great danger at all times while here. Mr. Franks is a prudent, cool, and courageous officer, who will not abuse any authority granted him. I would therefore suggest that he be authorized, in his discretion, to retain one or more deputies, at such times as he may deem necessary, for the purposes suggested. That publicity may not be given to the matter, it is important that the deputies whom he may select be not known as such; and, that efficient service may be assured for the purposes indicated, it seems to me that they should be strangers to the Terrys. The Terrys are unable to appreciate that an officer should perform his official duty when that duty in any way requires his efforts to be directed against them. The marshal, his deputies, and myself suffer daily indignities and insults from Mrs. Terry, in court and out of court, committed in the presence of her husband, and without interference upon his part. I do not propose being deterred from any duty, nor do I purpose being intimidated in the least degree from doing my whole duty in the premises; but I shall feel doubly assured in being able to do so knowing that our marshal has your kind wishes and encouragement in doing everything needed to protect the officers of the court in the discharge of their duties. This, of course, is not intended for the public files of your office, nor will it be on file in my office. Prudence dictates great caution on the part of the officials who may be called upon to have anything to do in the premises, and I deem it to be of the greatest importance that the suggestions back and forth be confidential. I shall write you further upon the subject of these cases in a few days. I have the honor to be your most obedient servant, JOHN T. CAREY, U. S. Attorney."

"Department of Justice, Washington, D. C., May 27, 1889. J. C. Franks, Esq., United States Marshal, San Francisco, Cal.—Sir: Referring to former correspondence of the department relating to a possible disorder in the session of the approaching term of court, owing to the small number of bailiffs under your control to preserve order, you are directed to employ certain special deputies at a *per diem* of five dollars, payable out of the appropriation for fees and expenses of marshals, to be submitted to the court, as a separate account from your other accounts against the government, for approval, under section 846, Revised Statutes, as an extraordinary expense, that the same may be forwarded to this department in order to secure executive action and approval. Very respectfully, W. H. H. MILLER Attorney General."

THE EVIDENCE.

Stephen J. Field. I came to this State in June last to attend to my Judicial duties here as the Justice of the Supreme Court of the United States, assigned to this circuit. On August 8, I left this city for Los Angeles to hear a case there on the 10th and to be at the opening of the court on the 12th. I was accompanied by Deputy Marshal Neagle, the petitioner; I opened the Court there on the 12th, Judge Ross sitting with me and delivered on that day opinions in two important cases. On the following day I heard an application for an injunction in a water case from San Diego Co. and there being no more cases ready, I left the city for San Francisco by the 1:30 train on Tuesday, the 13th, being accompanied by Mr. Neagle. On the morning of the 14th about 7:30 we stopped for breakfast at Lathrop and I went with Mr. Neagle into the station dining room and we took seats at the same table, Neagle to my left and the table being a middle one.

A few minutes afterwards, Judge Terry and his wife came

in. When Mrs. Terry saw me, which she did directly she got diagonally opposite me, she wheeled around suddenly, and went out in great haste. I afterwards understood that she went for her satchel. Judge Terry walked past, opposite to me, and took his seat at the second table below. The only remark I made to Mr. Neagle was: "There is Judge Terry and his wife." He remarked: "I see him." Not another word was said. I commenced eating my breakfast. I saw Judge Terry take his seat. In a moment or two afterwards I looked around, and saw Judge Terry rise from his seat. I supposed at the time he was going out to meet his wife, as she had not returned, so I went on with my breakfast. It seems, however, that he came round back of me—I did not see him—and he struck me a violent blow in the face, followed instantaneously by another blow. Coming so immediately together, the two blows seemed like one assault. I heard "Stop! stop!" cried by Neagle. Of course, I was for a moment dazed by the blows. I turned my head

around, and I saw that great form of Terry's, with his arm raised, and his fists clenched to strike me. I felt that a terrific blow was coming, and his arm was descending in a curved way, as though to strike the side of my temple, when I heard Neagle cry out, "Stop! stop! I am an officer." Instantly two shots followed. I can only explain the second shot from the fact that he did not fall instantly. I did not get up from my seat, although it is proper for me to say that a friend of mine thinks that I did; but I did not. I looked around, and saw Terry on the floor. I looked at him, and saw that peculiar movement of the eyes that indicates the presence of death. Of course, it was a great shock to me. It is impossible for any one to see a man in the full vigor of life, with all those faculties that constitute life, instantly extinguished, without being affected, and I was. I looked at him for a moment, then rose from my seat, went around, and looked at him again, and passed on. Great excitement followed. A gentleman came to me whom I did not know, but I think it was Mr Lidgerwood, and said: "What is this?" I said: "I am a justice of the Supreme Court of the United States. My name is Judge Field. Judge Terry threatened my life, and attacked me, and the deputy-marshal has shot him." The deputy-marshal was perfectly cool and collected, and stated: "I am a deputy-marshal, and I have shot him to protect the life of Judge Field." I cannot give you the exact words, but I give them to you as near as I can remember

them. A few moments afterwards the deputy-marshal said to me: "Judge, I think you had better go to the car." I said: "Very well." Then this gentleman, Mr. Lidgerwood, said: "I think you had better;" and with the two I went to the car. I asked Mr. Lidgerwood to go back and get my hat and cane, which he did. The marshal went with me, remained for some time, and then left his seat in the car, and, as I thought, went back to the dining-room. (This is, however, I am told, a mistake, and that he only went to the end of the car.) He returned, and either he or some one else stated that there was great excitement; that Mrs. Terry was calling for some violent proceedings. I must say here that, dreadful as it is to take life, it was only a question of seconds whether my life or Judge Terry's life should be taken. I am firmly convinced that, had the marshal delayed two seconds, both he and myself would have been the victims of Terry.

A short time after the train started again, an officer entered the car and said it was his duty to arrest Neagle and at the next station took him off the car in his custody. I continued my journey alone to San Francisco, where I was also arrested but released after a few hours.

I told the officer he ought to have a warrant before making the arrest, remarking that if a man should shoot another when he was about to commit a felony, such as setting fire to your house, you would not arrest him for a murder; or if a highwayman got on the train to plunder,

The officer replied very courteously by the suggestion that there would have to be an inquest. Neagle at once said: "I am ready to go," thinking it better to avoid all controversy and being perfectly willing to answer anywhere for what he had done. Marshal Franks met me at the train, when a detective stepped up and said that he had a telegram from the Sheriff of San Joaquin County to arrest me. Mr. Franks said to him, "You shall not arrest him. You have no right to do so. It would be an outrage and if you attempt it I will arrest you."

Cross-examined. I had no weapon of any kind at the time of the killing; I have never had on my person or used a weapon since I went on the bench of the Supreme Court of this State, in October, 1857, except once. That was when I crossed the Sierra Mountains in 1862. I leaned on his arm on account of my lameness. Just before we reached Lathrop I told Mr. Neagle that I was going to take breakfast at the dining room there. He said, "Judge, you can get a good breakfast at the buffet on board." I did not think at the time what he was driving at but I am now satisfied that he did not want me to get off. I said I prefer to have my breakfast at this table, that I had come down from the Yosemite Valley a few days before and got a good breakfast there and was going there for that purpose. He replied: "I will go with you." We were among the first to get off the train.

David Neagle. I am the petitioner in this case. Marshal

Franks appointed me a deputy U. S. Marshal for this District and gave me special instructions to attend upon Justice Field both in Court and when going from one court to another and to protect him from any assault that might be attempted on him by Terry or Terry's wife. In accordance with these instructions I went with the Judge to Los Angeles, was with him the few days he was there and took the same car with him on his return trip. Knowing that the Terrys lived at Fresno, when the train stopped there in the night I went out of the sleeping car to the platform to watch. To my surprise I saw the two board the train but on another car. As soon as we left Fresno, or rather just before we got to Merced, I spoke to the conductor, Woodward, and informed him that I was a deputy United States marshal; that Judge Field was on the train and also Judge Terry and his wife and that I was apprehensive that when the train arrived at Lathrop there would be trouble between those parties, and inquired whether there was an officer at that station and was informed that there was a constable there. I then requested the conductor to send word to the officer to be at Lathrop on the arrival of the train and also applied to other parties to induce them to endeavor to secure assistance for him at that place in case it should be needed.

Just before we got to Lathrop I told Judge Field that the Terrys were in the next car and suggested that I should bring his breakfast for him into the car so as to avoid meeting them. But

the Judge would not consent to this and so we went into the dining-room together and took seats at a table. Shortly after, Judge Terry and his wife entered the dining-room, his wife following him several feet in the rear. When the wife reached a point nearly opposite Justice Field she turned around and went out rapidly from the room and, as appeared from what afterwards followed, she went to the car to get her satchel. When she returned from the car the satchel was taken from her and it was found to contain a pistol—revolver—containing six chambers, all of which were loaded with ball. This pistol lay on the top of the other articles in the satchel. Judge Terry passed down opposite Justice Field to a table below where they were sitting. In a few minutes, while Justice Field was eating, Judge Terry rose from his seat, went around behind him—the Justice not seeing him at the time—and struck him two blows, one on the side and the other on the back of the head. The second blow followed the other immediately; that one was given with the right hand and the other with the left. Judge Terry then drew back his hand with his fist clenched apparently to give the Justice a violent blow on the side of his head, when I sprang to my feet calling out to Terry: "Stop! stop. I am an officer." Terry bore at the time on his face an expression of intense hate and passion, the most malignant I had ever seen in my life and I have seen a great many men in such situations. The expression meant life or death for one or

the other. As I cried out those words, "Stop! stop! I am an officer," I jumped between Terry and Justice Field and at that moment Judge Terry appeared to recognize me and instantly with a scowl moved his right hand to his left breast, to the position where he usually carried his bowie-knife. As his hand got there I raised my pistol and shot twice in rapid succession, killing him almost instantly. The position of Judge Field was such—his legs being at the time under the table—and he sitting, that it would have been impossible for him to have done anything even if he had been armed. Judge Terry had a very furious expression, that of an infuriated giant. My cry to him to stop was so loud that it could be heard throughout the whole room and I believe that a delay in shooting of two seconds would have been fatal to both myself and Justice Field. When Mrs. Terry came back with her satchel in her hand, she threw herself on her husband's dead body, moaned, shrieked and called on the bystanders to avenge his death, saying that he had no weapons and that he had been murdered.

Our train left Los Angeles at 1:30 Tuesday afternoon. I got off at every station at which a stop was made to see who got on board; before retiring I told the porter to be sure and wake me in time to get dressed for Fresno. When I saw Terry and his wife get on there, I returned to the sleeper and told Judge Field, who had been wakened by the stopping of the train. He said, "very well, I hope they will have

a good sleep." I slept no more that night.

Judge Terry never took his eyes off me after he looked at me or I mine off him. I did not hear him say anything. Had I waited two seconds I believe I would have been cut to pieces. The motion he made with his right hand indicated to me that he would have that knife out within another second and trying to cut my head off.

W. W. Presbury. Am a deputy U. S. Marshal. I assisted in taking Judge Terry from the courtroom after his contempt actions. I also helped to take him and his wife to the Alameda prison. On the way Mrs. Terry repeated a number of times that she would kill both Judge FIELD and Judge SAWYER. Terry said nothing to restrain her, but added that he was not through with Judge FIELD yet; while in jail at Alameda, Terry said that after he got out of jail he would horse-whip Judge FIELD, and that he did not believe he would ever return to California, but this earth was not large enough to keep him from finding Judge FIELD, and horsewhipping him; and, in reply to a remark that this would be a dangerous thing to do, and that Judge FIELD would resent it, he said: "If Judge FIELD resents it, I will kill him." While in jail Mrs. Terry exhibited to a witness Terry's knife, at which he laughed, and said, "Yes, I always carry that," and made a remark about judges and marshals, that "they were all a lot of cowardly curs," and he would "see some of them in their graves yet." Mrs. Terry also said

that she expected to kill Judge FIELD some day.

Thomas T. Williams. I am the editor of a daily newspaper in this city. After he was sent to the Alameda prison, Judge Terry sent word to me that he would like to see me; I went and had a long conversation with him. Among other things he said was that Judge FIELD had put a lie in the record about him and he would have to take that back, "and if he did not take it back, and apologize for having lied about him, he would slap his face or pull his nose." I said to him, "Judge Terry, would not that be a dangerous thing to do? Judge FIELD is not a man who would permit any one to put a deadly insult upon him, like that." He said, "Oh, Field won't fight." I said: Well, judge, I have found nearly all men will fight. Nearly every man will fight when there is occasion for it, and Judge FIELD has had a character in this state of having the courage of his convictions, and being a brave man." At the conclusion of that branch of the conversation, I said to him: "Well, Judge FIELD is not your physical equal, and if any trouble should occur he would be very likely to use a weapon." He said: "Well, that's as good a thing as I want to get." The whole impression conveyed to me by this conversation was that he felt he had some cause of grievance against Judge FIELD; that he hoped they might meet, that he might have an opportunity to force a quarrel upon him, and he would get him into a fight. After the return of Justice FIELD to California this summer I had other conversations

with Terry, in which the same vindictive feelings of hatred were manifested and expressed by him.

J. H. O'Brien. Reside in Stockton and am an old friend of the deceased. I visited him while he was in the Alameda jail. In the course of our conversation he said: "When I get out, I will horsewhip Judge FIELD. He will not dare to come back to California, but the earth is not big enough to hide him from me."

J. F. Grady. Was a former partner of Judge Terry. As he got on the train that night at Fresno, I handed him my pistol, saying: "Take this, Judge, you may need it." "No," he replied, "I have no use for a pistol. I never carry one." "Well," I said, "I want you to take it; you may need it, for I feel I will never see you again." He took it and handed it to his wife.

James Brown. I knew Judge Terry well; had known him for many years; he was a large man and a man of unusual strength for his age. He constantly, to my knowledge, carried a bowie-knife concealed on his person in the use of which he was specially skilled. He in his life on several occasions showed great readiness in using it upon persons towards whom he had an enmity or against whom he had a grievance.

J. C. Franks. In accordance with the instructions from the Attorney General of the United States and of the United States District Attorney, I appointed Mr. Neagle a deputy Marshal. I specially instructed him as to his duty to protect the person of Justice FIELD from violence; I

told him he was to protect him at all hazards; that on account of the violent and desperate character of Judge Terry he must be active and alert, ready for any emergency; that in case any violence was attempted by anyone, he was to command the assailant to stop and to inform he was a United States officer.

James Cross. I am an attorney. Was present the day the Terry's were committed for contempt. I sat next to her. I noticed before she interrupted Judge FIELD that she nervously worked at the clasp of a small satchel and tried to open it; and not succeeding, in consequence of her excitement, she hastily sprang to her feet, and interrupted the Justice. Knowing that she had before drawn a pistol from a similar satchel in the master's room, I concluded she was trying to get her pistol out, and I consequently held myself in readiness to seize her arm as soon as it should appear, and endeavor to prevent its use until I could get assistance, my right arm being partially disabled.

William Johnson. In the month of August of last year, I was on the Los Angeles-San Francisco train. Judge Sawyer was on the same car; I spoke to him and he told me he had been holding court in Los Angeles. At Fresno, Judge Terry and his wife came aboard and took seats in the section just behind the Judge. To my amazement I saw Mrs. Terry lean over and take hold of Judge Sawyer's hair and give it a vicious jerk. Then she changed to the seat next to her husband and I heard her say: "I will give him a taste of what

he will get by and by. Let him render this decision if he dares,"—the decision being the one already mentioned, then under advisement. Terry made some remark about too many witnesses being in the car, adding that "the best thing to do with him would be to take him out into the bay, and drown him." Others in the car saw all this.

T. W. Stackpole. I keep the dining-room at the Lathrop station. After the Judge came in that morning I was much surprised to see Terry and his wife come in, too. Just as soon as Terry sat down I went over to him for I saw his wife pointing at Judge FIELD. I knew the hostile feelings they had and feared there might be trouble. So I said to Terry: "I hope you will not do anything rash, Judge Terry. Mrs. Terry has gone out to the car for some purpose. I fear she will create a disturbance." "I think it very likely," he replied. You had better watch her and prevent her coming in." I put two men at the door for that purpose. But when I turned around I saw him get up and walk over to Judge FIELD's table, lean over and slap him in the face. It was done before I thought to follow him. I saw Neagle jump up, draw his revolver and call out that he was an officer of the law. Terry seemed to pay no attention but lifted his hand to strike again, and immediately Neagle put his pistol to Terry's chest and fired. He fell back to the floor, without being able to

say a word that I could hear. Just then his wife rushed up with an open satchel in her hand. I stopped her and took it from her and took out of it a loaded revolver. Then she became hysterical, calling out for vengeance and denouncing everybody as murderers.

Several witnesses testified to Mrs. Terry's struggle to retain her pistol; that she cried out, "Let me get it, I will fix him"; that she called out to the crowd to hang the man that killed Judge Terry and "lynch Judge FIELD." She followed him to his car, tried to get it but was prevented and cried, "If I had my pistol, I would fix him." The conductor of the train testified that he saw her lying over the body of her husband about a minute and when she rose up she unbuttoned his vest and said, "You may search him; he has got no weapon on him." Not a word had been said about his having had a weapon. No one had made a movement towards searching him.

Several witnesses were convinced that had she been searched after rising from Terry's body the knife would doubtless have been found concealed upon her person. A number of witnesses testified to her conduct as above described. She said also: "You will find that he has no arms, for I took them from him in the car, and I said to him that I did not want him to shoot Justice FIELD, but I did not object to a fist bout."

Mr. Johnson, the attorney general of the state, contended that the offense of which the petitioner is charged could only be inquired into before the tribunals of the state, and there exists no power in the government of the United States to take away the pris-

oner from the custody of the proper authorities of the state of California, and carry him before a judge of the court of the United States, and release him without a trial by jury according to the laws of the state of California. There is no Federal statute authorizing any such protection as that which Neagle was instructed to give Justice FIELD.

Mr. Carey: We do not pretend that any person in this state, high or low, who commits a crime, might not be tried by the local authorities, if it were a crime against the state; but that when, in the performance of his duties, that alleged crime consisted in an act which is deemed a part of the performance of a duty devolved upon him by the laws of the United States, it was within the competency of the national tribunals to determine, in the first instance, whether that act was a duty devolving upon him, and, if it was a duty devolving upon him, the officer had committed no offense against the state, and was entitled to be discharged.

JUDGE SAWYER: The homicide in question, if an offense at all, is an offense under the California laws and that State only can deal with it, *as such, or in that aspect*. It is not claimed to be an offense under the laws of the United States. But if the killing of Terry by Neagle was an "act done * * * in pursuance of a law of the United States," within the powers of the national government, then it is *not*, and *it cannot be*, an offense against the laws of the State of California, no matter what the statute of the state may be, the laws of the United States being the supreme law of the land. A state law, which contravenes a valid law of the United States is, in the nature of things, necessarily void—a nullity. It must give place to the "supreme law of the land." In legal contemplation, there can no more be two valid laws, which are in conflict, operating upon the same subject-matter, at the same time, than, in physics, two bodies can occupy the same space at the same time. But, as we have seen by the authorities cited, it is the exclusive province of the judiciary of the United States to, ultimately, and conclusively, determine any question of right, civil or criminal, arising under the laws of the United States. It is, therefore, the prerogative of the national courts to conclusively construe the national statutes, and determine whether the homicide in question was the result of an "act done in pursuance of a law of the United States," and when that

question has been determined in the affirmative, the petitioner must be discharged and the state has nothing more to do with the matter. All we claim is the right to determine the question, was the homicide the result of "an act done in pursuance of a law of the United States?" and if so, discharge the petitioner. As incidental to, and involved in, that question, it is necessary to inquire whether the act of the petitioner was performed under such circumstances as to justify it. If it was, then he was in the line of his duty. If not, then he acted outside his duty. We do not make the inquiry at all for the purpose of determining whether the act was an offense, or justifiable under the statutes of the state. We do not assume to consider the case in that aspect at all. We simply determine whether it was an act performed in pursuance of a law of the United States. Nor do we act in this matter because we have the slightest doubt as to the impartiality of the state courts and their ability and disposition to ultimately do exact justice to the petitioner. We have not the slightest doubt or apprehension in that particular; but there is a principle involved. The question is, has the petitioner *a right* to have his acts adjudged and, if found to have been performed in the strict line of his authority and duty, a *further right* to be protected by that sovereignty whose servant he is and whose laws he was executing? If he has that right, then there is no encroachment upon the state jurisdiction, and this court must, necessarily, entertain his petition and determine his rights under it and under the laws of the United States. It has no discretion. It cannot decline to hear him without an utter disregard of one of the most important duties imposed upon it by the constitution and laws of the United States. What the state tribunals might or might not do in this particular instance is not a matter for a moment's consideration.

The question is, what are the rights of the petitioner as to having his case heard and disposed of in the courts of the sovereignty, whose servant he is, and whose laws he was

employed in executing. If he has a right to be heard in this court, then we must hear him, willing or unwilling. There is no alternative. Whether the writ should issue in this case was not a question of "expediency," and whether the petitioner shall be discharged, or remanded, is not a question of "policy" or "comity," as suggested in some quarters. It is a question of *personal right and personal liberty*, arising under the constitution and laws of the United States which the court cannot ignore. There is a class of cases of which *Ex parte Royall* is an example, in which the court may exercise a discretion as to the *time* of interference, but, in our opinion, this is not one of them. *Ex parte Royall*, 117 U. S. 251, 6 Sup. Rep. 734. But if it rests in our discretion to discharge or remand the petitioner to the state courts to be there first tried for an offense against the state, while we are satisfied that he is entitled to be discharged, to what useful end would he be sent back, since upon being tried and convicted he would still be discharged by the national courts on *habeas corpus* if the act should appear to them to have been performed in pursuance of a law of the United States? This would be but to put the state to *great, useless expense* and subject the petitioner, if guilty of no offense, to unjust imprisonment, in violation of his legal rights, until his trial could be had and his writ of *habeas corpus* afterwards again sued out, heard and decided, when the result, in all probability, would at last be the same. Evidently public justice demands that the case should be "summarily" decided now, as required by section 761, Rev. St. The court has no right to trifle with the petitioner's constitutional rights by unnecessarily subjecting him to unjust imprisonment, great expense and vexatious delays. In case of a remand and conviction, the national courts must hear and decide the case at last. Far better for all concerned that they should decide it now and forever end it. We have no desire to usurp a jurisdiction that does not belong to us. We have enough to do in exercising the admitted jurisdiction conferred upon us without seeking to

enlarge it in the smallest particular, but we must perform our duty, as we understand it, be the consequences what they may.

It is, therefore, in order to dispose of the case, to inquire and ascertain whether the petitioner is in custody for an act done in pursuance of a law of the United States.

Mr. Justice Field, of the United States Supreme Court, allotted to the Ninth Circuit, was traveling, officially from one part of his circuit to another in pursuance of the requirements of the statutes of the United States, for the purpose of holding a circuit court. By reason of threats against his life, made by dissatisfied litigants, generally known and published in the newspapers, and brought to the knowledge of the United States marshal for the northern district of California, and by him called to the attention of the attorney general of the United States, that officer directed the marshal to furnish the justice with protection, while thus engaged in the performance of his judicial duties on the circuit. The marshal, deeming it proper, furnished the necessary protection by assigning that duty to the petitioner, who was a United States deputy-marshal. The claim is that the petitioner, as such deputy-marshal, was affording the only protection practicable to Justice Field in the lawful discharge of his duty, when the homicide was committed, and that the killing was necessary for the preservation of the lives of both Justice Field and himself at the time the fatal shot was fired. The homicide was committed at Lathrop and not upon land purchased by the United States with the consent of the state for the needful uses of the United States in pursuance of article 1, § 8, of the constitution. Conceding the points to be as stated, do they present a case of an act performed in pursuance of a law of the United States, subject to their jurisdiction and to the jurisdiction of this court, and is the petitioner held under an arrest on a charge of murder by the state, "in custody in violence of the constitution or laws of the United States," within the meaning of the statute?

It is urged that, since the homicide was committed in the state at large, and not in the court-house, or upon land within the exclusive jurisdiction of the United States, the question as to whether the homicide is murder is a question arising exclusively under the laws of the state, and that it can be investigated and determined by the state courts alone. It is admitted on the part of the state that the United States have exclusive jurisdiction over the custom-house block, and "over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dockyards and other needful buildings," in pursuance of section 8, art. 1, of the national constitution, and that the state has no jurisdiction whatever of any offense committed in such places. But it is contended that the United States have no jurisdiction of offenses committed outside the lands so purchased in other portions of the state, but that in the state at large the jurisdiction of the state is exclusive. This proposition, like most others urged by those who insist on extreme state rights doctrines, wholly ignores the principle that there can be no legal conflict, or inconsistency in matters wherein the state is subordinate, and the United States are paramount—where the constitution and laws of the United States are the supreme law of the land. We have already seen that, although in certain cases, the courts of the United States have jurisdiction to discharge on *habeas corpus* prisoners held in custody by the state courts, in violation of the constitution and laws of the United States, yet that the state courts "cannot under any authority conferred by the state discharge from custody persons held by authority of the courts of the United States or of commissioners of such courts, or by officers of the general government acting under such laws," and that this "results from the supremacy of the constitution and laws of the United States." This principle, established in the *Booth* and *Tarble Cases*, was recently properly recognized by the Supreme Court of California, when upon the return of the writ of *habeas corpus* in *Terry's Case* it appearing that he was in custody by

virtue of a judgment of the United States circuit court, it declined to require the sheriff to produce his body. As the powers and duties of the state and national courts are by no means reciprocal in this class of cases, so they are not reciprocal in the matter of territorial jurisdiction mentioned, as claimed on the part of the state. The constitution and laws of the United States as to those matters wherein they are supreme extend over every foot of the territories of the United States, and the jurisdiction of its courts, to enforce rights derived thereunder is as extensive as the territory to which they are applicable.

The power to keep the peace is a police power, and the United States have the power to keep the peace in matters affecting their sovereignty. There can be no doubt, then, that the jurisdiction of the United States is not affected by reason of the place—the locality—where the homicide occurred. If the locality is a necessary element of jurisdiction, a majority of the offences created by the statutes would be out of their jurisdiction and the statutes creating such offenses would be nullities and practically useless. For example, for a quarter of a century the United States courts in this state were held in rented buildings owned by private parties. They had no jurisdiction over them under the provision of section 8, art. 1, of the national constitution; and no jurisdiction other than that had over portions of the country to which the constitution and its laws extended. Had an assault been committed in open court upon the judge, in one of these buildings, and the assailing party been slain by the marshal in protecting the judge, under circumstances excusing or justifying the homicide, would it be pretended that the court would have no jurisdiction to protect him from interference by the state government? Or have the United States and their courts no jurisdiction over the offense of resisting a United States marshal in the lawful execution of the process of the courts? or over the crime of counterfeiting the coin, or forging the bonds, or other securities of the United States, or other offenses against the laws unless the offense is committed in a place

under the exclusive jurisdiction of the United States? Such a claim would be preposterous.

The result is that wherever the constitution and laws of the United States operate at all the state laws in conflict with them are subordinate, and those of the United States are supreme and paramount. Numerous cases are reported in the books wherein parties arrested for offenses under the state laws for acts performed in the discharge of duties imposed by the laws of the United States, have been discharged from imprisonment on *habeas corpus* by the United States courts in consonance with these principles now authoritatively established by the Supreme Court of the United States in the cases cited and others in the same line.

It is the exclusive prerogative of the national courts to finally determine whether an act performed by one of the officers of the United States, and especially an officer of the court itself, is done in pursuance of a law of the United States or whether, when under arrest for acts performed in connection with his office, he is "in custody in violation of the constitution or of a law of the United States."

The only remaining questions to determine are: (1) Was the homicide now in question committed by petitioner while acting in discharge of a duty imposed upon him by the constitution or laws of the United States, within the meaning of section 753 of the Revised Statutes? (2) Was the homicide necessary or was it reasonably apparent to the mind of the petitioner at the time and under the circumstances then existing, that the killing was necessary in order to a full and complete discharge of such duty?

It is urged that there is no statute which specifically makes it the duty of a marshal, or a deputy-marshal, to protect the judges of the United States courts while out of the court-room, traveling from one point to another in the circuit on official business, from the violence of litigants who have become offended at adverse decisions made by such judges in the performance of their judicial duties, and that marshals, or deputies, so engaged are not within the provisions of section 753 of the Revised Statutes. It will be

observed that the language of the provision of section 753 is, "an act done * * * in pursuance of a *law* of the United States," not in pursuance of a *statute* of the United States. The statutes of Congress in their express provisions do not present all the law of the United States. Their incidents and implications are as much a part of the law as their express provisions. When they prescribe duties, provide for the accomplishment of certain designated objects, or confer authority in general terms, they carry with them all the powers essential to effect the ends designed.

The petitioner, long before he reached Lathrop, endeavored, through the conductor of the train and the proprietor of the eating-house at that place, to have "*a constable*" in readiness on the arrival of the train *to keep the peace*, but without success. When too late to prevent the tragedy, the constable appeared and arrested the petitioner for performing the duty which it is now claimed devolved exclusively upon himself or some other peace officer of the state. Had the United States in this instance relied upon another government—the State of California—to keep the peace as to one of their most venerable and distinguished officers—one of the judges of their highest court—in relation to matters concerning the performance of his official duties, they would have leaned upon a broken reed, and there would now, in all probability, be a vacancy on the bench of one of the most august judicial tribunals in the world, and the deceased—the would-be assassin—might perhaps be a tenant of the Stockton jail, to be disposed of by another government. The case affords a striking illustration of the necessity for the United States to protect their own officers while in the discharge of their duties, and by such protection protect the nation itself. The result was that, instead of arresting the conspirator in the contemplated murder—the wife of the deceased, armed with a loaded revolver till relieved of it by a citizen—threatening death to Justice Field, calling upon the bystanders to aid her, and attempting to enter the car with the avowed purpose of compassing his death, the officer of the United States, assigned by his government to the

special duty of protecting the Justice's life against these very parties, while in the actual performance of the duties so assigned him, was himself arrested without warrant and disarmed by an inferior officer of the state and interrupted in the discharge of those momentous duties, thereby leaving his charge helpless and without the protection provided by the government he was serving, at a time when such protection seemed most needed. Had Neagle been a deputy-sheriff of San-Joaquin county, assigned by his superior to this very duty of protecting the life of Justice Field, under the state laws and in the performance of his duties, committed the homicide in all other respects under precisely the same circumstances, would he have been arrested by the constable of Lathrop without a warrant and disarmed with such inconsiderate haste and thereby prevented from further performing his duty to protect the life and person of Justice Field, leaving him to pursue the remainder of his journey without protection? Yet the constable was informed that Neagle was acting as deputy United States marshal under the orders of his superiors for the protection of the life and person of a Justice of the Supreme Court of the United States.

We do not wish to be regarded as now calmly and deliberately looking back upon the scene and sitting in judgment upon the action of the constable, or as passing censure upon his zeal. He, doubtless, in the emergency, where time for consideration was short and the facts not fully appreciated, acted according to the best dictates of his judgment, necessarily hastily formed. But when the state now comes in, after an arrest upon a warrant issued upon such flimsy testimony as that presented, and deliberately claims the exclusive right to sit in judgment upon the acts of the United States deputy-marshal, performed not upon his own interpretation of the law but upon that of the attorney general of the United States, who may be presumed to possess some knowledge of his powers and duties, it is well to consider the circumstances from a standpoint presenting a view of both sides of the question. In

matters of the public peace, in which the national government is concerned, the marshals and deputy-marshals, within the scope of their authority, are *national peace officers*, with all the statutory and common-law powers appertaining to peace-officers. Is not the national public peace involved when a deadly assault is unexpectedly made upon a judge in open court, in which the marshal and his deputies, seeing the assault, are both authorized and bound on their own motion, without any previous order or command, to interpose and use sufficient force to quell the disturbance and subdue the parties making it? Yet where is there any specific provision of the statute imposing that duty upon them? The marshal is required to attend court, but it is not provided what he shall do in court. To what end shall he be in court if not to keep order and, if necessary, to protect the judges from violence, by force or any practicable means? But there is no statute requiring it in terms. The general duties of marshals are provided for in section 787, which reads as follows:

"It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and execute throughout the district, all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty."

There is no more authority specifically conferred upon the marshal by this section to protect the judge from assassination in open court without a specific order or command, than there is to protect him out of court, when on the way from one court to another, in the discharge of his official duties. And the assassination in court, as well as out of it, might well be accomplished before the judge would be aware of his danger, and before it would be possible to give a command or order to the marshal for his protection. The authority exists in the one case, as in the other, from the nature of the office, and the powers arising under the common law, recognized and in use in the country, and in the nature of things, inherent in the office. The very idea

of a government composed of executive, legislative and judicial departments, necessarily, comprehends the power to do all things through its appropriate officers and agents within the scope of its general governmental purposes and powers requisite to preserve its existence, protect it and its ministers, and give it complete efficiency in all its parts. It necessarily and inherently includes power in its executive department to enforce the laws, keep the national peace with regard to its officers while in the line of their duty, and protect by its all-powerful arm all other departments and the officers and instrumentalities necessary to their efficiency while engaged in the discharge of their duties. In language attributed to Mr. ex-Secretary Bayard, used with reference to this very case, which we quote, not as a controlling judicial authority, but for its intrinsic, sound, common sense:

"The robust and essential principle must be recognized and proclaimed, that the inherent powers of every government which is sufficient to authorize and enforce the judgment of its courts, are, equally, and at all times, and in all places, sufficient to protect the individual judge who, fearlessly and conscientiously in the discharge of his duty, pronounces those judgments."

Our jurisprudence is derived from, and founded upon, that of England, and our judges and officers are substantially the same. They have corresponding duties imposed upon them and inherently possess corresponding executive powers to enable them to effectively perform their duties. From the foundation of our government, many of their common-law duties have been performed and common-law powers exercised without specific or statutory direction and without question, and the common-law principles governing them, except so far as inapplicable or modified by statute, still remain in force. So where the duties of the marshal are not limited or specifically defined by the statute, we must look to the powers and duties of sheriffs, at common law for them, so far as those duties come within the purposes and powers of the national government. There are many acts and duties daily performed by the marshals, and by other officers, that are not specifically pointed out or defined by

the statute. The marshals are in daily attendance upon the judges and performing official duties in their chambers. Yet no statute specifically points out those duties or requires their performance. Indeed, no such places as chambers for the circuit judges or circuit justices are mentioned at all in the statutes. The judges' chambers do not appear to have any "local habitation." The justices of the Supreme Court at Washington have, in fact, no chambers otherwise than as they study and do their work out of court at a room in their own residences. We have in the San Francisco courthouse rooms that we call chambers in which the work of the judges out of court is, in part, but not wholly, performed. We apprehend that the marshal would as clearly be authorized to protect the judges here in chambers as in the court-room. All business done out of court by the judge is called "chamber business." But it is not necessary to be done in what is usually called "chambers." Chamber business may be done, and often is done, on the street, in the judge's own house, at the hotel where he stops when absent from home, or it may be done *in transitu* on the cars in going from one place to another, within the proper jurisdiction to hold court. Mr. Justice Field could, as well, and as authoritatively issue a temporary injunction, grant a writ of *habeas corpus*, an order to show cause, or do any other chamber business for the district in the dining-room at Lathrop or in the cars, as at his chambers in San Francisco or in the court-room. He could have made a writ of *habeas corpus* returnable before himself on the car and lawfully heard and decided the case while on his passage to San Francisco. The chambers of the judge, where chambers are provided, are not an element of jurisdiction, but are a convenience to the judge and to suitors—places where the judge at proper times can be readily found and the business conveniently transacted. But the chambers of the judge, as a legal entity, are something of a myth. For the purposes of jurisdiction, the chambers of the judge are wherever he happens to be in his circuit or district, when the exigencies of the case call for the transaction of chamber business, and a judge

is as clearly engaged in the discharge of the duties of his office when going from one place of holding court to another for the purpose of holding court, and just as much entitled to protection from his own government against murderous or other assaults from desperate suitors on account of his judicial action, as when actually engaged in business at chambers or in holding court.

In England, whence we derive our jurisprudence, the high sheriff of the shire was the keeper of the king's peace—that is to say, the keeper of the peace of the sovereignty which the king represents. So here, I take it, under the authorities cited, the marshal is the keeper of the peace of the government of the sovereignty he serves, within the scope of the supreme powers of that government. In England, in early days, it was the duty in every shire of the sheriffs not only to attend the courts, but to attend the judges through their circuits. They met the judges at the border of the shire and attended them until they left it at the border of another. *Dalt. Sher. c. 98, p. 369* (published in 1682). See, also, 40 *Alb. Jaw J.* 161. Such is, also, understood to have been the practice in early days in a number of the states. From the advancing state of civilization this practice has, doubtless, generally become unnecessary for the safety of the judges, and it has fallen into desuetude. But it does not follow that the power to thus protect them has been abolished or become extinguished. It simply remains latent or dormant, ready to be called into action whenever the exigencies of the case or times require it. And how could there possibly be a more urgent occasion for reviving the practice, and calling it into action, than the recent journey of Justice Field to Los Angeles and return on official business?

Upon general, immutable principles, the power must, necessarily, be inherent in the executive department of any government worthy the name of government, to protect itself in all matters to which its authority extends, and this, necessarily, involves the power to protect all the agencies and instrumentalities necessary to accomplish the objects and purposes of that government. In the national government

of the United States the judiciary constitutes one of its most important branches. Unlike the judiciary of other nations, it is invested with the jurisdiction to pass finally and conclusively upon the powers of the legislative and executive departments of the government and to confine them within their constitutional limits. It is therefore, the balance-wheel of the national government that keeps it running regularly and smoothly within its proper domain. Impotent, indeed, must be the executive branch of the government if it is not empowered to protect the lives of the judges of the highest branch of its judiciary from assault and assassination on account of their judicial decisions by desperate, disappointed litigants while passing from point to point within their territorial jurisdiction, in the discharge of their high functions and duties. We cannot think the power can be wanting, even if there were no constitutional or statutory provision governing the case. It seems impossible that the national government should be left to the mercy, good-will or complacency of the state to afford that protection to its judges that the United States, if worthy to be called a nation, are bound themselves to furnish.

But we are not without constitutional and statutory provisions broad enough and specific enough, as we think, to cover the case. The national constitution providing a government for 65,000,000 of people covers but a very few pages, but it seems to be amply sufficient for the purposes intended. Article 2, section 1, of the national constitution provides that, "The executive power shall be vested in a President of the United States of America." In prescribing the duties of the president, in the terse but comprehensive language of section 3, art. 2, it provides that "he shall take care that the laws be faithfully executed." These provisions make him the executive head of the nation and give him all the authority necessary to accomplish the purposes intended—all the authority necessarily inherent in the office not otherwise limited. Congress, in pursuance of powers vested in it, has provided for seven departments as subordinate to the president, to aid him in performing the executive

functions conferred upon him. Section 346, Rev. St., provides that, "one of the executive departments shall be known as the 'Department of Justice,'" and that there shall be an "attorney general, who shall be the head thereof." He has general supervision of the executive branch of the national judiciary, and section 362 provides as a portion of his powers and duties that "the attorney general shall exercise general superintendence and direction over the attorneys and marshals of all the districts of the United States and territories as to the manner of discharging their respective duties; and the several district attorneys and marshals are required to report to the attorney general an account of their official proceedings, and of the state and condition of their respective offices in such time and manner as the attorney general may direct." Section 788, Rev. St., provides that "the marshals and their deputies *shall have, in each state, the same powers in executing the laws of the United States as the sheriffs and their deputies in such state may have, by law, in executing the laws thereof.*" By section 817 of the Penal Code of this state the sheriff is a "peace-officer." By section 4176, Pol. Code, he is "*to preserve the peace*" and "*prevent and suppress breaches of the peace,*" The marshal is, therefore, in accordance with the decision of the Supreme Court already referred to, and under the provisions of the statute above cited, "*a peace-officer*" so far as *keeping the peace in any matter wherein the national powers of the United States are concerned, and as to such matters he has all the powers of the sheriff as a peace-officer under the laws of the state. He is, in such matters, "to preserve the peace" and "prevent and suppress breaches of the peace."* An assault upon or an assassination of a judge of the United States court while engaged in any matter pertaining to his official duties, on account, or by reason of his judicial decisions, or action in performing his official duties, is a breach of the peace affecting the authority and interests of the United States and within the jurisdiction and power of the marshal or his deputies, to prevent as a peace-officer of the national government. Such an assault

is not merely an assault upon the person of the judge as a man. It is an assault upon the national judiciary, which he represents, and through it an assault upon the authority of the nation itself. *It is, necessarily, a breach of the national peace.* As a national peace-officer, under the conditions indicated, it is the duty of the marshal and his deputies to prevent a breach of the national peace by an assault upon the authority of the United States in the person of a judge of its highest court while in the discharge of his duty. If this be not so, in the language of the Supreme Court, before cited, "Why do we have marshals at all?" What useful functions can they perform in the economy of the national government?

The constitution of the United States provides for a Supreme Court, with jurisdiction more extensive, in some particulars, than that conferred on any other national judicial tribunal. If the executive department of the government cannot protect one of these judges while in the discharge of his duty from assassination by dissatisfied suitors on account of his judicial action, then it cannot protect any of them, and all the members of the court may be killed, and the court itself exterminated and the laws of the nation by reason thereof remain unadministered and unexecuted. The power and duty imposed on the president to "take care that the laws are faithfully executed" necessarily carries with it all power and authority necessary to accomplish the object sought to be attained, and certainly the power and duty to protect from the deadly assaults of desperate suitors the lives of the judges of the highest court in the nation while engaged in the lawful discharge of their duties.

The act of the attorney general in directing the United States marshal to protect the life of Mr. Justice Field against the assaults of the deceased and his wife is, in legal contemplation, the act of the president. The president speaks and acts through the heads of the several executive departments in relation to subjects which appertain to their respective duties.

By section 788, Rev. St., and the several provisions of

the statutes of California herein cited, the United States marshal is made a peace-officer, and as such he is authorized to preserve the peace, so far as a breach of the peace affects the authority of the United States and obstructs the operations of the government and its various departments. The courts must, from the nature of things, be enabled fully to perform all their functions imposed upon them by the constitution and laws without hindrance or obstruction, and they must have the inherent power to protect themselves by, and through, their executive officers, under the direction and supervision of the attorney general and the president, against obstruction and hindrance in the performance of their judicial duties. An assault upon a judge in court, or a judge out of court, while in the performance of his duty, induced by his judicial action and *intended or calculated to obstruct him in, or deter him from, a free and full discharge of his duty, is a breach of the national peace affecting the sovereignty of the nation and tending to obstruct and impair the operations and efficiency of one of the most important departments of the government.* As such, it is the duty of the United States marshal, under the police powers of the nation so conferred upon him by the statutes cited, and as a national peace-officer, to prevent such breach of the peace. Under the state laws deputy-sheriffs, when occasion requires, constables and police officers of cities, are assigned to certain districts to watch over the safety of the citizens and to guard and protect their persons and property from assault, destruction or injury, *in short, to prevent the commission of crimes, etc.* These officers, in cities, are found everywhere, night and day, guarding the citizen and his property from injury. So the attorney general, under the provisions of the statute cited, and the president under the provisions of the constitution, requiring him to see that the laws are faithfully executed, are authorized and empowered to direct the assignment by the marshal of any deputy to perform any special national police duty within his jurisdiction arising out of the statutes, whether by express provision or necessary implication, and under any power necessarily

inherent in the president and government, in order to give full effect and efficiency to the government or any of its departments. It has never, so far as we are advised, been doubted that a marshal or deputy-marshal is authorized to protect a judge and preserve order in open court, even by the use of force, without any special order or command as a part of the duties necessarily inherent in his office; yet, as we have already seen, there is no more specific statutory authority for so preserving order and protecting the judge in court than for performing the same duty, under proper conditions, for a judge engaged in performing his duties of whatever nature out of court.

It is argued by one of the counsel on behalf of the state that these matters pertain, exclusively, to the peace of the state, and that the state has not only power to preserve the public peace, but that it is amply capable of performing this service; that it is its duty to do it; that the threats of the deceased were matters of public notoriety, and that by calling the powers of the state into action Justice Field's life might have been protected by the state and there would have been no necessity whatever for what is called on the part of the state, the illegal action of the United States marshal. It may be conceded, and it is undoubtedly true, that it was an imperative duty of the state to preserve the public peace and to amply protect the life of Mr. Justice Field, *but it did not do it*. Where would Mr. Justice Field have been today had he relied solely upon the state to perform her conceded imperative duty? Not having performed that obligation while on his journey in discharge of his judicial duties, does a complaint now come with a good grace from the state against the United States for performing it for her, as well as for the national government, by protecting one of their most distinguished judicial functionaries through one of their own officers, in the only manner in which it could have been effectively performed?

In the present case, and on his official journey, there was a necessity for the kind of protection afforded Mr. Justice Field, for no other kind would have been adequate. The

occasion required a preventive remedy. The use of the state police force would have been impracticable, as the powers of the sheriff would have ended at the borders of his county and of other township and city peace-officers at the boundaries of their respective townships and cities. Only a United States marshal or his deputy could exercise these official functions throughout the United States judicial district, and as we have seen, the powers exercised concern matters affecting the peace of the national government, and if the national government has no authority to act in the premises it certainly ought to have such power. The only remedy suggested on the part of the state was to arrest the deceased and hold him to bail to keep the peace under section 706 of the Penal Code, the highest limit of the amount of bail being \$5,000. But, although the threats are conceded to have been publicly known in the state, no state officer took any means to provide this flimsy safeguard.

Perhaps counsel intended to intimate that it was not the duty of the state, but of Mr. Justice Field himself to set in motion proceedings under the law furnished by the state, to put the decedent under bonds to keep the peace. Has it come to this, then, that a justice of the Supreme Court of the United States, when in obedience to the behests of the law, he comes to California to perform his judicial duties, must submit to the humiliation of immediately, upon his arrival, stealing away to some justice of the peace and instituting proceedings to bind over to keep the peace, vindictive and dangerous litigants who have threatened his life? But what security to Mr. Justice Field would a bond of \$5,000 afford against resolute, violent and desperate parties for whom the penalties for murder have no deterring power? The United States marshal, the United States attorney for the district of California, the attorney general of the United States at Washington and the mass of the people of California thought that the exigencies of the occasion required something more, and the result fully justified their view of the matter. Although no adequate means of protection were afforded by the state on his late official journey, and Mr. Justice Field

would, in all probability, not now be among the living had not the petitioner, by the wise forethought of the attorney general been detailed to protect his life, yet the fact of the failure of the state to perform its duty, does not afford any reason for taking the petitioner out of the custody of the state, unless in committing the homicide he was engaged in the performance of "an act done * * * in pursuance of a law of the United States," and the killing was justifiable. The failure to perform its duty would not alone oust the jurisdiction of the state if it be exclusive. But since the possible remedy mentioned under the state law was alluded to by counsel as ample, we refer to it as illustrating the necessity for a speedy amendment of the laws of the United States if they are now so defective as to afford no protection to the United States judges in the performance of their high functions. It is apparent to us, if he is not now so protected, that the distinguished justice allotted to the Ninth circuit, and also his associates, should have thrown over them the protecting ægis of the laws of that government which he has so long faithfully and efficiently served.

After mature consideration, we have reached the conclusion that the homicide in question was committed by petitioner while acting in the discharge of a duty imposed upon him by the constitution and laws of the United States, within the meaning of the provisions of section 753 of the Revised Statutes.

It only remains to inquire, secondly, was the homicide necessary, or was it reasonably apparent to the mind of the petitioner at the time and under the circumstances then existing that the killing was necessary in order to a full and complete discharge of such duty? The answer to this proposition is really included in the answer to the last, but we desire to make some observations bearing especially upon it. The attorney general and counsel for the state declined to discuss the question as to whether the homicide was justifiable, because, in their view, this is a question solely for the state court, the case, as claimed by them, not being within the provisions of section 753 of the Revised Statutes,

and, therefore, not within the jurisdiction of this court. Holding, as we do, that the case falls within those provisions, so far as the petitioner was authorized to act by the constitution and laws of the United States, it becomes necessary to determine whether the homicide was justifiable. For, if it was malicious, wanton or reckless, without any reasonable apparent necessity, in order to fully and properly perform his duty of protecting Justice Field, then it was an act performed beyond and outside his duty, and he is amenable to the state courts. The facts set forth in the petition, and in the traverse to the return of the sheriff, are fully and satisfactorily proved by the testimony, and whether we determine the case upon demurrer to the traverse or upon the whole case as presented in the record and evidence, the result must be the same. Were the question of justification to be determined by the laws of the State of California, or in the state court, there could be no ground for doubt. Says the Penal Code: "Homicide is also *justifiable* when committed by any person when resisting any attempt to murder any person, * * * or to do some great bodily injury upon any person." Section 197, Pen. Code. But we shall consider the question without reference to the statute of California.

It is unnecessary to repeat the facts in full. When the deceased left his seat, some 30 feet distant, walked, *stealthily*, down the passage in the rear of Justice Field, and dealt the unsuspecting jurist two preliminary blows, doubtless by way of reminding him that *the time for vengeance* had at last come, Justice Field was already at the traditional "wall" of the law. He was sitting quietly at a table, back to the assailant, eating his breakfast, the side opposite being occupied by other passengers, some of whom were women, similarly engaged. When, in a dazed condition, he awoke to the reality of the situation and saw the stalwart form of the deceased with arm drawn back for a final mortal blow, there was no time to get under or over the table had the law, under any circumstances, required such an act for his justification. Neagle could not seek a "wall" to justify

his acts without abandoning his charge to certain death. When, therefore, he sprang to his feet and cried, "Stop! Stop! I am an officer," and saw the powerful arm of the deceased drawn back for the final deadly stroke, instantly change its direction to his left breast, apparently seeking his favorite weapon, the knife, and at the same time heard the half-suppressed, disappointed growl of recognition of the man, who, with the aid of half a dozen others, had finally succeeded in disarming him of his knife at the courtroom a year before, the supreme moment had come; or, at least, with abundant reason, Neagle thought so, and fired the fatal shot. The testimony all concurs in showing this to be the state of facts, and the almost universal *consensus* of public opinion of the United States seems to justify the act. On that occasion a second, or two seconds, signified, at least, two valuable lives, and a reasonable degree of prudence would justify a shot one or two seconds too soon, rather than a fraction of a second too late. Upon our minds the evidence leaves no doubt whatever that the homicide was fully justified by the circumstances.

We have seen in an eastern law journal, but with its disapproval, some adverse criticism upon the action of the petitioner, attributed to a quarter ordinarily entitled to great consideration and respect. But it is not for scholarly gentlemen of humane and peaceful instincts—gentlemen who in all probability never in their lives saw a desperate man of stalwart frame and great strength in murderous action—it is not for them sitting securely in their libraries, 3,000 miles away, looking backward over the scene, to determine the exact point of time when a man in Neagle's situation should fire at his assailant in order to be justified by the law. It is not for them to say that the proper time had not yet come. To such the proper time would never come. Neagle, on the scene of action, facing the party making a murderous assault, knowing by personal experience his physical powers and his desperate character, and by general reputation his life-long habit of carrying arms; his readiness to use them and his angry, murderous threats, and seeing

his demoniac looks, his stealthy assault upon Justice Field from behind, and remembering the sacred trust committed to his charge, Neagle, in these trying circumstances, was the party to determine when the supreme moment for action had come, and if he honestly acted, with reasonable judgment and discretion, the law justifies him, even if he erred. But who will have the courage to stand up in the presence of the facts developed by the testimony in this case and say that he fired the smallest fraction of a second too soon? In our judgment he acted under the trying circumstances surrounding him in good faith and with consummate courage, judgment and discretion. The homicide was, in our opinion, clearly justifiable in law, and in the forum of sound, practical common sense, commendable. This being so, and the act having been "done * * * in pursuance of a law of the United States," as we have already seen, it cannot be an offense against, and the petitioner is not amenable to, the laws of the state. Let him be discharged.

On appeal to the Supreme Court of the United States, the decision of the Circuit Court freeing Neagle from the charge of murder was affirmed. Mr. Justice MILLER¹⁶ delivering the judgment of the Court after examining all the evidence, said:

"The testimony produces upon us the conviction of a settled purpose on the part of Terry and his wife amounting to a conspiracy to murder Justice FIELD; and we are quite sure that if Neagle had been merely a brother or friend of Judge FIELD, traveling with him, and aware of all the previous relations of Terry to the judge—as he was—of his bitter animosity, his declared purpose to have revenge even to the point of killing him, he would have been justified in what he did in defense of Mr. Justice FIELD's life, and possibly his own.

But such a justification would be a proper subject for consideration on a trial of the case for murder in the courts of the state of California; and there exists no authority in the Courts of the

¹⁶ MILLER, SAMUEL FREEMAN (1816-1890). Born Richmond, Ky. Grad. (M. D.) Transylvania Univ. 1838. Practiced medicine in Kentucky; removed to Pennsylvania and then to Iowa where he studied law and was admitted to the bar. He became prominent as a lawyer and in 1862 appointed by President Lincoln an associate Justice of the Supreme Court of the United States which position he filled until his death. He was a member of the Electoral Commission of 1876.

United States to discharge the prisoner while held in custody by the State authorities, for this offense, unless there be found in aid of the defense of the prisoner some element of power and authority asserted under the government of the United States. This element is said to be found in the facts that Mr. Justice FIELD, when attacked, was in the immediate discharge of his duty as judge of the Circuit Courts of the United States within California; that the assault upon him grew out of the animosity of Terry and his wife arising out of the previous discharge of his duty as circuit justice in the case, for which they were committed for contempt of court; and that the deputy-marshal of the United States who killed Terry in defense of Field's life, was charged with a duty, under the law of the United States, to protect Field from the violence which Terry was inflicting, and which was intended to lead to Field's death."

The Supreme Court on the legal questions held:

(1) That justices of the Supreme Court of the United States are in discharge of their official duty not only while actually holding court, but also while traveling through their circuits for the purpose of holding courts at the different places therein.

(2) That the Federal statute giving circuit courts power to issue writs of *habeas corpus* on petition of a person alleged to be in custody "for an act done or omitted in pursuance of a law of the United States, * * * or in custody in violation of the constitution or of a law or treaty of the United States," does not require that the law shall be by express act of congress. Any obligation fairly and properly inferable from the constitution, or any duty of a United States officer to be derived from the general scope of his duties under the laws of the United States, is a "law," within the meaning of the statute.

(3) That under the United States Constitution declaring that the president of the United States "shall take care that the laws be faithfully executed," the president has power, through the attorney general, to direct a United States marshal to accompany and protect from a threatened assault a justice of the Supreme Court while in the discharge of his official duties.

(4) That a deputy United States marshal is justified in killing a man who, within the state of California, makes a murderous assault on a justice of the Supreme Court of the United States while in discharge of his duties, since the Federal statute gives him the same powers in each state in executing the laws of the United States as the sheriffs, and their deputies have, by law, in executing the state laws; and the California code provides that sheriffs and their deputies shall preserve the peace; and declares that homicide is justifiable when committed in resisting an attempt to murder any person or do any bodily injury upon any person.

(5) That where a United States marshal in custody for an act

done in pursuance of a law of the United States is brought before a Federal Court by *habeas corpus* and discharged, he cannot be afterwards tried in the State Courts. *Cunningham v. Neagle*, 10 S. C. Rep. 658.

With the Attorney General of the United States¹⁷ there appeared counsel in argument in behalf of the deputy marshal, two of the greatest lawyers and advocates this country has produced—Joseph H. Choate¹⁸ and James C. Carter.¹⁹

IN THE SUPREME COURT.

Aug. 15, 1889.

James L. Crittenden. Your Honors: It has become my painful duty to announce formally to the Court, the death of a former Chief Justice.

BEATTY, C. J. I think, Mr. Crittenden, this is a matter which should be postponed until the court has had a consultation about it.

Mr. Crittenden. I acted at the request of several of the friends of the deceased. It has been customary for the court to take formal action prior to the funeral, which I understand is to take place tomorrow.

August 16.

BEATTY, C. J.²⁰ The members of the court wish to consult with each other. Please postpone your announcement until tomorrow.

¹⁷ MILLER, WILLIAM HENRY HARRISON (1840-1917). Born Augusta, N. Y. Educated Hamilton Coll. Served throughout the Civil War. Began practice of law in 1866 at Ft. Wayne, Ind., and in 1874 removed to Indianapolis, where he became a partner of Benjamin Harrison, Atty. Gen. U. S. 1888-1892.

¹⁸ CHOATE, JOSEPH HODGES (1832-1917). Born Salem, Mass. Grad. A. B. 1852, Harv.; LL.B. 1854. Called to Mass. Bar, but removed to New York City, 1855. President American Bar Assn. 1898; Ambassador to England, 1899-1905; D. C. L. Oxford and LL.D. of many American and foreign universities; honorary Bencher of Middle Temple; delegate to Hague Peace Congress, 1907.

¹⁹ CARTER, JAMES COOLIDGE (1827-1905). Born Lancaster, Mass. Grad. Harv. Admitted to N. Y. bar. Member Commn. for Municipal Admn. 1875; of Const. Commission, 1888; Counsel for U. S. at Behring Sea Arbitration. Eminent for his skill as an advocate and legal learning, he was for years before his death, the acknowledged leader of the bar of New York.

²⁰ BEATTY, WILLIAM HENRY (1838-1914). Born Lucas Co., Ohio; but lived in Kentucky until 1853 when he went with his father to California. Student Univ. of Va. 1856-1858. Admitted to California bar 1861; removed to Nevada, 1863; District Judge 1864-1875; Judge Supreme Court, 1875-1881; returned to California, 1880 and practised law at Sacramento. Chief Justice Supreme Court of California, 1889 to time of death. LL.D. Un. of Col. 1914.

Mr. Crittenden. I desire to renew the matter I presented yesterday. As a personal friend of the late Judge Terry I should deem myself very cold indeed and very far from discharging the duty which is imposed upon that relation, if I did not present this to your Honors. Our friendship for over thirty years and the acquaintance and intimacy existing between the deceased and his family and myself, require that I should at this time, move the court in recollection of the man who presided in the Supreme Court of this State for so many years with honor, ability, character and integrity, that it adjourn during the day on which he is to be buried, which is today.

BEATTY, C. J: I regret very much that counsel should have persisted in making this formal announcement, after the intimation from the Court. Upon full consultation, we thought it better that it should not be done. The circumstances of Judge Terry's death are notorious and under these circumstances the Court had determined that it would be better to pass the matter in silence and not take any action upon it, and this is the order of the Court.

On August 15, the sheriff of San Joaquin County, accompanied by the chief of police and Marshal Franks called on Judge Field, the Sheriff having the warrant for his arrest issued by the Stockton Justice of the Peace, and it was arranged that he should present it at the Federal building the next day. At the appointed hour Justice Field awaited the Sheriff in his chambers surrounded by friends, including judges, ex-judges and members of the bar. As the sheriff entered Judge FIELD arose and pleasantly greeted him. The sheriff said: "Justice Field, I presume you are aware of the nature of my errand. "Yes," replied the Justice, "proceed with your duty; I am ready. An officer should always do his duty." The sheriff stated to him that he had a warrant, duly executed and authenticated and asked him if he should read it. "I will waive that, Mr. Sheriff," replied the Justice. The sheriff then handed him the warrant, which he read, folded it up and handed it back, saying pleasantly, "I recognize your authority, sir, and submit to the arrest; I am, sir, in your custody."

Meanwhile a petition had been prepared to be presented to Judge Sawyer for a writ of *habeas corpus*, returnable at once before the United States Court. As soon as the arrest was made the petition was signed and presented to Judge Sawyer, who ordered the writ to issue returnable forthwith. In a very few minutes U. S. Marshal Franks served the writ on the sheriff. While the proceedings looking to the issue of the writ were going on, Justice Field had seated himself and invited the sheriff to be seated. The latter complied with the invitation and began to say something in regard to the unpleasant duty which had devolved upon him, but Justice Field promptly replied, "Not so, not so; you are but doing your plain duty, and I mine in submitting to arrest. It is the first duty of judges to obey the law."

As soon as the *habeas corpus* writ had been served the sheriff

said he was ready to go into the court. "Let me walk with you," said Justice Field as they arose, and took the sheriff's arm. In that way they entered the court-room. Justice Field seated himself in one of the chairs usually occupied by jurors. Time was given to the sheriff to make a formal return to the writ and in a few minutes he formally presented it. The petition of Judge Field for the writ set forth his official character and the duties imposed upon him by law and alleged that he had been illegally arrested, while he was in the discharge of those duties and that his illegal detention interfered with and prevented him from discharging them.

The sheriff made answer that he detained the petitioner by virtue of the magistrate's warrant. The proceedings were then adjourned until August 22, when after argument, another adjournment was made to August 27.

In the meantime the following communication had been addressed to the Attorney General by the Governor of the State:

Executive Department, State of California,
SACRAMENTO, August 21, 1889.

HON. G. A. JOHNSON,

Atty. Genl. Dear sir:

The arrest of Hon. Stephen J. Field, a Justice of the Supreme Court of the United States, on the unsupported oath of a woman who on the very day the oath was taken and often before, threatened his life, would be a burning disgrace to the State unless disavowed. I therefore urge upon you the propriety of at once instructing the District Attorney of San Joaquin County to dismiss the unwarranted proceedings against him.

The question of the jurisdiction of the State Court in the case of the deputy United States Marshal, Keagle, is one for argument. The unprecedented indignity on Justice Field does not admit of argument.

R. W. WATERMAN, Governor.²¹

The District Attorney of San Joaquin immediately had the charge dismissed by the local Justice of the Peace, which released him from the sheriff's claim to his custody and the *habeas corpus* proceedings in his behalf fell to the ground. On the 27th, the day appointed for the hearing, the sheriff announced that in compliance with the order of the magistrate he released Justice Field from custody, whereupon the cause of *habeas corpus* was dismissed.

In making the order Circuit Judge Sawyer severely animadverted on what he deemed the shameless proceeding at Stockton. He said: "We are glad that the prosecution of Mr. Justice Field has been dismissed, founded as it was upon the sole, reckless, and as to him,

²¹ WATERMAN, ROBERT WHITNEY (1826-1891). Born Fairfield, N. Y. Removed to Illinois, 1846, and engaged in business and in 1850 went to California, where he engaged in mining. Became Governor of California; died at San Diego.

manifestly false affidavit of one whose relation to the matters leading to the tragedy and whose animosity towards the courts and judges who have found it their duty to decide against her, and especially towards Mr. Justice Fields, is a part of the judicial and notorious public history of the country.

It was under the circumstances and upon the sole affidavit produced especially after the coroner's inquest so far as Mr. Justice Field is concerned, a shameless proceeding and as intimated by the Governor of the Commonwealth, if it had been further persevered in, would have been a lasting disgrace to the State.

While a Justice of the Supreme Court of the United States, like every other citizen, is amenable to the laws, he is not likely to commit so grave an offense as murder, and should he be so unfortunate as to be unavoidably involved in any way in a homicide, he could not afford to escape, if it were in his power to do so; and when the act is so publicly performed by another as in this instance and is observed by so many witnesses, the officers of the law should take some little pains to ascertain the facts before proceeding to arrest so distinguished a dignitary and to attempt to incarcerate him in prison with felons, or to put him in a position to be further disgraced and perhaps assaulted by one so violent as to be publicly reported, not only then but on numerous previous occasions, to have threatened his life. We are extremely gratified to find that through the action of the chief magistrate and the Attorney-General a higher officer of the law, we shall be spared the necessity of further inquiring as to the extent of the remedy afforded the distinguished petitioner by the Constitution and laws of the United States, or of enforcing such remedies as exist, and that the stigma cast upon the State of California by this hasty and (to call it by no harsher term) ill-advised arrest, will not be intensified by further prosecution."

THE TRIAL OF WILLIAM HENRY THEODORE
DURRANT FOR THE MURDER OF BLANCHE
LAMONT, SAN FRANCISCO,
CALIFORNIA, 1895

THE NARRATIVE.

William Henry Theodore Durrant was born in Toronto, Canada, in 1871, and while a child went to San Francisco with his parents, who gave him a good education. In 1895 he was a medical student at Cooper Medical College, there. He pretended to be a devout Christian and was one of the most active members of the Emanuel Baptist Church, and Secretary of the Young People's Christian Endeavor Society, also a Superintendent in the Sunday School.

Blanche Lamont, who had come to the city to fit herself for teaching, made her home with her uncle, Mr. Noble. She was a very religious girl and seldom went to places of amusement, and then only when accompanied by her relatives. She always attended the Emanuel Baptist Church and was a member of the Christian Endeavor and a great favorite because of her lovable disposition and good qualities.

On the morning of April 3, 1895, Miss Lamont left home as usual to attend the High School. As she waited for the street car she encountered Durrant, who boarded it with her and rode to the High School building, where he left her and went to the Medical College. At two she went over to the Normal School, where she was taking instructions in cooking. Shortly after two Durrant appeared in front of this school and was observed by a woman in a house opposite, apparently waiting for someone, as he walked back and forward on the sidewalk for some time.¹

¹ Mary Vogel, p. 648.

At three Miss Lamont came out of the building with her school books in her hand, accompanied by several of her schoolmates. Durrant approached them, engaged her in conversation and got on a street car with her.² At about a quarter past four a San Francisco attorney saw them pass together walking in the direction of the Emanuel Church.³ Across the street from the church lived a lady⁴ who had a daughter who had come that day from the country to do some shopping and who had promised her mother to be back in the early afternoon. As it was growing late, she was watching for her from her front window. At seventeen minutes after four she looked at the clock and then returned to the front room, but instead of seeing her daughter she saw Durrant, whom she knew well as a member of the same church, walk up to the gate, open it and followed by a young lady, enter the building. She saw Durrant's face very clearly, but could not see that of his companion, but on account of her height she took her to be either Miss Lamont or another member of the church, Miss Turner.⁵ But Miss Turner had not seen or spoken to Durrant that day. At five o'clock another young man, and a great friend of Durrant, George King, the church organist, went to the schoolroom to practice there on the piano for the next service. He had hardly begun when Durrant opened the door. He was very pale, nervous and weak and was without a coat and hat. He explained his condition by saying he had been up near the roof trying to locate a leak in the gas-pipe and had been overcome by gas. King ran to a drug store near by and returned with a bottle of bromo-seltzer, which Durrant drank.⁶

When he had recovered, King asked him to assist in carry-

² Minnie Edwards; Alice Dorgan, p. 647; Mary Lanigan, p. 648.

³ Martin Quinlan, p. 650.

⁴ Caroline Leake, p. 651.

⁵ Edna L. Turner, p. 652.

⁶ George King, p. 652.

ing a small organ upstairs down to the main floor. Durrant consented, but King detected no odor of gas whatever while upstairs and, furthermore, all the gas fixtures had been inspected by plumbers just previous to this time and were in good condition. Shortly after removing the organ, the two men left the church, Durrant walking to King's home with him, although Durrant's home was in an opposite direction.

That night a prayer meeting was held in the church. Blanche Lamont not having returned, caused her aunt, Mrs. Noble, great anxiety. Thinking she might have gone to the home of some friend and would, as usual, attend the prayer-meeting, Mrs. Noble went there, but told nobody of Blanche's disappearance, believing that the girl would return. Durrant was seated behind Mrs. Noble, and during the services said to her, "Is Blanche here tonight?" Mrs. Noble replied: "No, she did not come." Durrant then said: "Well, I regret that she is not with us tonight as I have a book, 'The Newcomes,' which I promised her, but I will send it to her."

After a few days of suspense, Mrs. Noble communicated the mysterious disappearance of her niece to the police and the press. As Durrant was "above suspicion," no one considered it worth while to mention the fact that they had seen her in his company on the day of her disappearance. He called on Mrs. Noble and offered his services in the search for the lost girl and subsequently intimated to her and a fellow-student that she might have been carried off or entrapped by someone.⁷ A few days after making this statement the church janitor and two of his fellow students saw Durrant at the Oakland Ferry landing and asked him what he was doing there. He replied to the janitor that he was working on a clue he had obtained as to Blanche Lamont's whereabouts.⁸ And to the students

⁷ Tryphena C. Noble, p. 644.

⁸ Herman J. Schlageter, p. 647.

⁹ Frank Sademan, p. 655.

that he was waiting for one of his comrades in the signal service.¹⁰

On April 13 the postman delivered to Mrs. Noble a newspaper, wrapped in the usual fashion for the mail, and upon opening it the three rings which Blanche Lamont wore, fell out. A pawnshop keeper identified Durrant as the man who attempted to sell one of these rings to him, between the 4th and 10th of April.¹¹

On April 12 a young woman named Minnie Williams left the home of her employer in Alameda and had her trunk sent to the residence of her new mistress in San Francisco. She was also a member of the Emanuel Baptist Church and she told her old employer that she contemplated attending a meeting of young church members to be held at the home of a member of the church at 7:30 that evening. The girl never appeared there and Durrant, who was secretary of the society and should have been prompt in attendance, did not arrive until 9:30 p. m., and his excited and overheated appearance was a matter of general comment among those present. When at nearly midnight the company broke up, all the young people but Durrant went to their homes; but he was seen a little later standing in a dark corner close to the Emanuel Church.

On Saturday, April 13, the day before Easter Sunday, some ladies of the Emanuel Baptist Church went to that place for the purpose of decorating. Opening the door of a small room or closet in the library, they were horrified to discover the body of a young girl, subsequently identified as that of Minnie Williams. The discovery was reported at once to the police. The finger of suspicion soon pointed to Theodore Durrant, as several people declared that about eight o'clock the evening before they had seen Miss Williams enter the church in company with a young man whom they thought was Durrant. A search being made for him, it was found that early that morning he had left the city

¹⁰ C. W. Dodge; C. A. Dukes, p. 669.

¹¹ Adolph Oppenheim, p. 655.

with the Signal Corps of the State Militia. A search was made of his room and Minnie Williams' purse found in the pocket of his overcoat. On Easter Sunday he was arrested near Walnut Creek, notwithstanding the protest of his lieutenant that it was a most outrageous accusation.

The disappearance of Blanche Lamont was at once connected with the finding of the body of Minnie Williams. Search was made throughout the church and the nude corpse of Blanche Lamont was discovered in the unfinished belfry, her clothing and school books poked under the floor and between the studding and the plaster. An autopsy disclosed that she died from strangulation, but decomposition had reached such a state that it was impossible to determine more.

Separate coroners' inquests resulted in verdicts charging Durrant with both murders, and separate preliminary hearings by the police magistrate resulted in his being held without bail for the murder of Blanche Lamont and Minnie Williams. Subsequently, indicted by the Grand Jury, it was decided to try him first for the murder of Miss Lamont, though later additional evidence came to light which made the case of Miss Williams even stronger than the one on which he was convicted.

The trial began on July 22 and over a month was consumed in selecting a jury. Notwithstanding the overwhelming amount of evidence presented by the state, which proved conclusively that Durrant accompanied Miss Lamont from the school to Emanuel Baptist Church, he denied having seen her that day except in the morning, and attempted to prove an alibi by swearing that he was at Cooper Medical College at the time it was alleged he was in the very act of murdering the girl. While the records showed that someone had answered his name at roll call at the conclusion of the lecture at that hour, it was shown that it was customary for the students to answer for each other in case of absence, and no one would swear that Durrant was present at this lecture. As proof that he was not present, it was shown that several days afterwards he

persuaded a fellow-student to give him the notes that he had taken at the lecture.¹²

On September 24 the case went to the jury, which in a few minutes brought in a verdict of guilty.¹³ Then came a succession of appeals, not only to the state Supreme Court, but to the Supreme Court of the United States. But both these tribunals sustained the verdict and the governor refused to interfere.

On April 10 he was hanged at the St. Quentin prison. He protested his innocence to the last and was one of the coolest murderers who ever mounted the scaffold. To the warden he said he would waive the reading of the warrant and save him that unpleasant duty. No cemetery or crematory in San Francisco would accept the corpse, so strong was the public sentiment. A Los Angeles firm finally took the body and it was cremated in that city.

THE TRIAL.¹⁴

*In the Superior Court of the City and County,
San Francisco, California, July, 1895.*

HON. DANIEL J. MURPHY,¹⁵ Judge.

July 26.

The prisoner, William Henry Theodore Durrant, having

¹² Edward F. Glaser, p. 673.

¹³ During the trial the Alcazar Theater Company produced a play called the "Criminal of the Century," which was a dramatization of the Durrant murders. In defiance of an order of court prohibiting its production, and as a result W. R. Daily, the manager, was sent to jail for contempt.

¹⁴ *Bibliography.* "Report of the trial of William Henry Theodore Durrant, indicted for the murder of Blanche Lamont, before the Superior Court of the City and County of San Francisco, including a full history of the case. Illustrated from numerous photographs in the possession of the police department of San Francisco. By Edgar D. Peixotto, Esq., of counsel for the State. Detroit: The Collector Publishing Company, 1899."

"The San Francisco Newspapers of the Day."

¹⁵ MURPHY, DANIEL J. (1834-1919). Born Lowell, Mass. Died San Francisco, Cal.

been indicted for the murder of Blanche Lamont, was, on May 29, duly arraigned and pleaded not guilty.

On July 22 a motion for a change of venue was made which on July 25 was overruled. Today the empaneling of the jury was begun and was not concluded until August 29, no less than 490 men being summoned and examined. The following jurors were finally accepted and sworn: I. J. Truman, banker; Thomas W. Sieberlich, merchant; M. R. Dempster, merchant; Nathan Crocker, merchant; Charles P. Nathan, merchant; H. J. Smyth, capitalist; F. P. Hooper, merchant; L. Gregoire, book seller; Warren Dutton, capitalist; David Brooks, stable keeper; J. H. Babbitt, carriage maker; S. E. Dutton, merchant.

William S. Barnes, District Attorney,¹⁶ and *Edgar D. Peixotto*,¹⁷ for the State; *John H. Dickinson*,¹⁸ *Eugene N. Deuprey*¹⁹ and *A. W. Thompson*,²⁰ for the prisoner.

Mr. Barnes made the opening statement for the State.²¹

¹⁶ BARNES, WILLIAM S. (1876-1910). Born California; died Salada Beach, Cal.

¹⁷ PEIXOTTO, EDGAR DAVIS. Born New York 1867 of a long line of distinctively American ancestors. The Peixotto and the Davis families, from which he is descended on the maternal side, were among the earliest colonists of this country, the Peixottos settling in Rhode Island in the seventeenth century. Dr. D. L. M. Peixotto, his grandfather, was a distinguished New York physician, a writer of note, and dean of the faculty of medicine of Columbia College. An uncle, Benjamin F. Peixotto, was a law partner of Stephen A. Douglass. Practised in San Francisco for a time, and was Minister to Roumania under President Grant; and his father was a merchant of San Francisco. He was educated in public schools and graduated Hastings College of Law, 1888. After a year in Europe he began the practise in San Francisco. Assist. Dist. Atty., 1893; Sheriff's Atty., 1899; Delegate to Repub. Nat. Con's, 1896, 1900. Died 1925.

¹⁸ DICKINSON, JOHN H. (1849-1909). Born, W. Virginia. Admitted to California bar, 1873. State Senator, 1880-1881, 1897-1900. Colonel 1st. Reg. Nat. Guard, 1882-1891. Brigadier-General 1891-1894. Died Healdsburg, Cal.

¹⁹ DEUPREY, EUGENE N. (1848-1903). Born in Louisiana. Educated in San Francisco public schools and admitted to bar, 1871. Assist. Dist. Atty. 1900. Died San Francisco, Cal.

²⁰ THOMPSON, ABRAM WARREN (1830-1919). Went to California 1850. Died San Francisco, Cal.

²¹ At the close of the opening statement, the court ordered that the jury be taken to view the place and premises of the crime.

September 4.

THE WITNESSES FOR THE PEOPLE.

C. B. Noble: Blanche Lamont was my niece by marriage. Saw her dead body brought down from the belfry of the Emmanuel Baptist Church and taken to the morgue. She lived with me since the middle of September, 1894.

Dr. J. S. Barrett: Am autopsy physician at the morgue in this city; made an autopsy upon the body of Blanche Lamont on 14th April, 1895. Found death had resulted from asphyxiation caused by strangulation; found the skin over the entire body discolored and in process of decomposition; found seven finger-nail incisions on the left side of the throat and five on the right. Found a congestion of the lungs and a congestion of the venus of the brain. The means used were the hands.

Cross-examined: From the depth of the nail incisions, I think there was a great struggle; cannot say whether they were inflicted at the same time; do not think a person could strangle himself in that manner; it was the case of a violent death through the act of another.

George W. Russell: I made measurements and prepared this model of a portion of the Emmanuel Baptist Church which is on the easterly side of Bartlett

street. You enter by the front entrance on Bartlett street to the basement floor, where you are in the lobby, which is in the rear of the Sunday-school room. The room to the left is the library, with a closet and a door leading into the closet on the east side thereof, where the books were kept. A staircase leads from this into a lobby in the rear of the audience room and auditorium. A staircase lands you on the gallery floor, which is on a level with the first floor of the belfry. Easterly from the lobby the first door to the left opens into a class room out of which there are double doors leading into the Sunday-school room. There is another class-room to the right with double doors. At the northerly end of the Sunday-school room is a platform where the piano stands.

E. L. Gibson: Am a detective; made a search of the church and premises on April 13 between 10 and 12; all except the belfry; could not get in there as there was no handle upon the door; the lock was mutilated. April 14 Police Officer Reihl and Mr. Sademan, the janitor, and myself broke the door open. Saw the body lying on the top landing in

George W. Russell was designated to point out without comment, the various points in and about Emanuel Baptist Church that would in the course of the trial, be described and referred to in the testimony. The judge of the court, the prisoner, the counsel, the shorthand reporter and the jury, in the custody of the deputy sheriffs, made an inspection of the entire premises of Emanuel Baptist Church and after the inspection were returned to court and dismissed for the day.

the corner. The body was nude. The feet were close together, the hands folded across the breast. The coroner took charge of the body. It was carried down in a sheet. I saw no marks on it except around the throat—black marks. The body was white like a piece of marble.

Cross-examined: Never said to any one that there were footprints on the stairs or in the belfry.

A. B. Reihl: Am a police officer. On 14 April with Detective Gibson was in Emmanuel Church about 9:30 a. m. Went directly to the belfry door, found it locked. The knob was taken off. The body we found was perfectly nude.

Cross-examined: We saw bloodstains on the floor and on the stairway about half way up to the belfry. There was dust on the first floor room of the belfry and on the stairway—you could have seen a footprint on the step. On the last three steps of the last stairway in the upper part of the belfry saw footprints. That was the only place I noticed them.

James F. Hallet: Am a deputy coroner of this city. Arrived at the church at about 11 on April 14. Found the body of a nude woman lying in the corner of the belfry. Took it to the morgue.

T. J. Colman: Am a police officer; was detailed to search Emmanuel Church. Found two knobs in the opening under the belfry floor.

Cross-examined: The casing of the door showed marks as if they had been made by a hatchet or a chisel in an effort to pry the door open. A chisel was brought which fitted to the marks upon

the door. It was from the pastor's study from a tool box there.

Starr Dare: Was in Emmanuel Church on April 14, 1895, searching for different articles in the belfry. Found this waist or basque in the top of the belfry on that day. The skirt now shown me found in the south-east corner of the belfry among the rafters. The basque was torn at the throat and there was also a tear in the skirt. The corsets shown me were found by me in the belfry below the top platform; also the corset-cover and underclothing now shown me. The hatchet shown me was taken from the beam near the roof over the belfry, at the same time.

E. L. Samps: Am a special officer. On 14 April, 1895, assisted in the search for clothing with other officers. Found a left-hand lady's glove on the top platform of the belfry. I also found a stocking on the top platform, shoved down beneath the floor and a piece of underwear on one of the top beams between the wall and the beam.

E. V. Herve: Am a police officer. The books and strap now shown me were found by me at Emmanuel Church among the joists of the ceiling, opposite that corner in which the belfry is. They were strapped tight.

J. J. McGreevy: The hat shown me I found on April 16 underneath the first floor of the belfry of the church. The shoes shown me I found in the roof of the ceiling just above the auditorium.

Mrs. Tryphena C. Noble: Reside at 209 21st street. Knew Blanche Lamont; she was my sister's child and was living with me on April 3 since the middle

of September, when she came from Dillon, Montana, for her health and attended the Boys' High School and just started to attend the lectures at the Normal School on Powell. Known the defendant for about three years. Am a member of the Emmanuel Baptist Church. First met defendant at the church. Saw Blanche Lamont alive on the morning of the 3rd April at 8 when she was starting off for school. She wore the black dress and the large felt hat and had her books, strap and clothing which have been produced here. The plain gold ring with diamond chips, now shown me belonged to Maud Lamont, also a ring with a stone shown me and a plain gold ring; all these rings were worn by Blanche Lamont on 3rd day of April. Saw defendant about half-past 7 the evening of April 3 in the Sunday-School room after prayer-meeting had begun. Went to find my husband to tell him to see what had happened to Blanche as she had not returned. Defendant sat directly in front of me; asked me if Blanche was coming to prayer-meeting. Said that he rode down town with her in the morning on her way to school: that she asked him for a book, "The Newcomes," that he had promised to bring it to prayer-meeting, but had forgotten it and to tell her he would bring it on Sunday. I did not inform him that Blanche had not come home. I wanted to tell everybody in the church, but Maud said, "No, probably she is hurt and if you tell everybody you will have to contradict it." Before the body was found defendant called with Dr. Vogel at our house, afterwards

also with Clarence Wolf and Dr. Vogel and said he would go with Dr. Vogel and Clarence Wolf to look for Blanche. On 13th of April the postman brought a package addressed to me and we found wrapped up in a piece of paper which had been torn from the *Examiner*, those rings.

Cross-examined: Blanche had very few callers; only remember one. Defendant was an active participant at the various meetings of the church and at the socials. He was never a visitor at my house; only know of three times when I saw him there; first was when he came to the door with Blanche when they had been out to the park for a walk. Next time was when he called with his sister to ask if Blanche could go with them to a concert at the Methodist church. Was there fifteen or twenty minutes while she was getting ready. On 8th of April when he came with Dr. Vogel Maud and my husband were present; they remained about half an hour. Defendant said, when he went to leave, that Blanche was such a good girl that she believed every one to be as good as she was—she did not believe any evil in anyone and in that way she might have been carried off or entrapped in some way so she couldn't get home. His actions or conduct that evening did not attract my attention, nor his language or the circumstances or conditions or the manner in which he spoke. Remember he said to Maud, "If you want a friend come to the Emmanuel Church."

Maud Lamont: Blanche Lamont was my sister; she was born in Rockford, Ill. Just before coming to San Francisco we

lived in Dillon, Montana, with our parents. Have one brother and two sisters still surviving. We lived at 209 21st street with our uncle and aunt, Mr. and Mrs. Noble. She was 21, I am 20. The small ring with the diamond chips is my ring; I gave it to Blanche to wear. I attended the Emmanuel Church—the services and the Sunday School and socials. Blanche was also a member and attendant. Have been in company with Blanche and defendant quite frequently. George King has accompanied my sister, defendant and myself home from church quite frequently. Recognize the hat and clothing which has been introduced in evidence as that of my sister, worn by her on April 3. The book shown me, "The Newcomes" the defendant brought me on Friday morning after the 3rd April; told me Blanche had asked him for it and that he said he would bring it to the house. We conversed at the door. I did not tell him that Blanche was missing. He asked if Blanche was at home. I told him that she had to leave home at half past eight and it was then a quarter to nine. As a matter of fact she was not at home and had not been since Wednesday, April 3rd. My sister and I occupied the same room and the same bed. She weighed 120 pounds. The articles of clothing introduced in evidence she wore when she left the house on the morning of 3rd of April.

Cross-examined: Defendant took an active part in all the church affairs, at the services and at the socials and assisted in the management; also assisted as usher at the services. My

sister commenced to take music lessons after Christmas. I always accompanied my sister to church or anywhere like that that she went. She belonged to the Grace orchestra which was connected with the Methodist Church on 21st street.

Henry Jacob Shellmont: Am a conductor of the Sutter street railway, Larkin street branch. Knew Blanche Lamont by sight. Between 3rd March and 3rd April she rode on my car not less than fifteen times. She boarded the car at Mission and Ninth and left it at Sutter and Polk the morning of 3rd of April. She boarded my car at 9th and Mission at 8:42 and left it at Polk and Sutter at 8:52. A young man was with her I had never seen before, the defendant in this case, when she boarded the car that morning. Was surprised to see her accompanied by a young man whom I had never seen before. Did not know her name at that time, but subsequently learned that it was Blanche Lamont. After the car stopped she started towards the rear platform, the young man took her by the right arm and said something to her as if he intended her to take a seat on the dummy. She hesitated for a moment and accompanied him to the dummy and occupied a seat on the right side, from 9th and Mission to Sutter. He was fooling with her gloves which she had removed—a dark pair of gloves and he seemed to be talking very sweetly with her. At Geary street I came out to give transfers to Sutter street and I gave him two transfers.

Cross-examined: Think Miss Lamont rode on my car not less than three times that week; paid

no special attention, simply remember her as a passenger. First learned her name when I saw her picture in the papers about the 15th of last April, in the *Chronicle*. In order to satisfy myself, went to the City Hall and asked for permission to see Mr. Durrant. I identified him without difficulty.

Herman J. Schlageter: Am a medical student at the Cooper Medical College. Know defendant, was in the same class with him. On the morning of April 3rd I saw him get on the car at the corner of Mission and 9th street, a Larkin car. He was with a young lady. I did not notice the defendant and the young lady, particularly. Afterwards, about three or four days, had a conversation with defendant on a Polk street car when we were going home from college. He asked me if I remembered seeing him get on a car with a young lady the other morning; I said I did and he told me she had disappeared. He said he thought she had been induced into a house of ill-fame; that she was a very innocent young lady and he thought she could easily be led.

S. W. Horton: Am a newspaper reporter with the *Evening Post*. Had a conversation with defendant the night of his arrest. He stated he met Miss Lamont in the Mission, and he got on the car with her and rode down to 9th and Mission and from there he got on a Larkin street car and rode out to Sutter and Polk and that there he took a Sutter street car coming west and she took a Sutter street car going east.

Minnie Bell Edwards: Was a

student at the Normal school. Knew Blanche Lamont; saw her at the Normal school on 3rd of April, 1895, between 2 and 3 at the cooking class. She walked with me out of the Normal school towards Clay street. Saw Durrant that afternoon at the corner of Clay and Powell. He raised his hat to Miss Lamont and as I stepped on the car he and Miss Lamont got on the east side of the dummy. I went inside the car and she and defendant went on the outside of the east side of the dummy. Miss Lamont sat nearest the car on the dummy and defendant next to her. I went to Market street. When she came out of the school she had her school books with her. This outer garment she wore that day. He wore a very large, soft hat.

Cross-examined: I did not notice where they got off the car. I had never seen him before. The next time I saw him was at the office of the chief of police, twelve days after the occurrence. I had seen a picture of him published in the newspaper. He was dressed in an ordinary citizen's suit with a hat on.

Cross-examined: In the Chief of Police's office I recognized Durrant as having been on the car with Miss Lamont on April 3rd. The chief asked him if he had anything to say and he said, "I have to say, I was not."

Miss Alice Dorgan: I attended a lesson in cookery in the Normal School between 2 and 3, April 3rd, 1895, and saw Blanche Lamont there. Went out from the building walking toward Market street on the easterly side of Powell street in company with Miss Lanigan. At the corner of California and Powell noticed

Miss Lamont on a car with a young man; she was on the dummy and the car was going towards Market street. The young man was Theodore Durrant. She was dressed in the skirt and hat now shown me.

Cross-examined: Had never seen defendant prior to that time. At the city hall 15th April was taken to see if I could identify him. Had seen a picture of him in the *Chronicle* and I had learned from the papers of Miss Lamont's disappearance. First saw the couple and called Miss Lanigan's attention.

Miss May Lanigan: Alice Pleasant, now Mrs. George Dorgan, also Minnie Bell Edwards were students with me at the Normal School. Knew Miss Blanche Lamont by sight at the said Normal School. On 3rd April left school in the afternoon about five minutes after 3 in the company with Mrs. Dorgan. Saw Blanche Lamont on a Powell street car in company with defendant. They were sitting on the easterly side of the dummy. My attention was directed towards them by Miss Pleasant. Miss Lamont was smiling and Mr. Durrant was looking at a book which he held, which was open. Blanche Lamont was dressed in the basque and skirt shown me. The hat shown me is the same she had on. Durrant had on dark clothes and a soft hat. The hat shown me looks like the hat.

Cross-examined: His long hair attracted my attention at that time; he did not have much of a moustache. It struck me as unusual to see a gentleman with such long hair. I watched them closely until they disappeared.

May Vogel: The Normal School is across the street just opposite our house. Saw defendant at seven minutes past two on April 3rd, first on the corner opposite our window, then he went up to the school door and then he went down. I saw him walk up and down and then stand about five minutes leaning on the post; then he commenced going to walk up and down, and then he stand in the same place over a quarter of an hour, and then he was commencing to go up and down again, and then he was standing in the same place again where he stand before when I first saw him and then I got a better look. He was standing so long till the school went out and I seen two girls coming down from up stairs. They went down to the corner of Clay and Powell. He turned around and then commenced to run and I went quick to my other window. I saw him stop behind those two girls and raise his hat. One went into the car and the other girl went up there on the dummy and he jumped on, sitting next to her. Then the car went towards Market street and the last I saw he was sitting on the dummy on the side toward the Normal School with the young lady. Was looking at him with my own eyes, and I see it just as well, good enough. Anyhow I tried my opera glasses.

Cross-examined: I read very seldom, have no time. I do my own work and mind my own business. During all the time since April my husband don't allow me to read anything. I tell you why? A lady she told me if I see the picture in the paper for the first time. I say no, and

then I was looking for that paper and I see it. I told right away that is the same man what I see and that upset me. Many bad nights I had since that time that I see that paper. This is the reason why my husband don't allow me to read it; he hide the paper. First saw the picture about fourteen days after 3rd April. I can't tell whether it was in the *Call* or *Chronicle* or *Examiner*. Recognized him at once from the picture. I tell it to a lady that lived in the second house from our house, Mrs. Notting. I told Mrs. Schmidt, upstairs, there was Mrs. Cain present. I talked to my husband; I told him the first night that I see the man when he was coming home late in the evening when we get our supper, and then he took the picture. It upset me and then I can't do nothing. I sleep not, then he burned it up and I never saw any picture after that. My husband owns two routes in the Guide Publishing Company. I have no family except my husband. I live in a very little house on the lower floor. I was watching carefully because there was a robbery done a day or two before—only a couple of houses from our house. I had some money in the house and was afraid. Then that money was not all ours; that belonged three hundred to another gentleman what he gave it to me for safe keeping. I watch that man; he was too long on the street; he walked up and down between those places may be a quarter of an hour. He was dressed in a dark suit, a cut-away suit, and a large soft hat and lighter pants. His hat was crushed a little inside. He had

a kind of reddish brown moustache. I never wear glasses and never have worn any in my life. My age is forty-four years. There were no other girls coming from the school that got on this car; only the two that came from the door that went down the street. Mr. Seymour ordered me to be in court the 26th. I went with Mrs. Schmidt and Mr. Seymour sat us right in front on the first benches; and then that gentleman was coming in with some other gentlemen and then I jump up and says, "Mrs. Smidt, that is the man what I see." That was the second time what I see him and now I see him now for the third time.

Stewart Merrill: I took photographs of the cars passing at the intersection of Powell and California streets. (Three, showing the cars passing over the hill at California and Powell streets, taken from the position testified to by the witness and showing passengers on the car.)

Mrs. Elizabeth D. Crossett: Have known Theo. Durrant four years. Saw him on the afternoon 3rd April on a Valencia street car. Was sitting on the right-hand side of the car within one of the windows, going towards 25th and he was on the left-hand side of the dummy in company with a young lady. Don't know how the young lady was dressed. She wore a broad-brimmed hat, light, very light, a dirty color, with large bows and feathers in the front. Do not recognize the hat shown. I boarded the Valencia car at Haight street and Valencia; noticed defendant and the young lady. They left the car at 22nd and Valencia. Observed defend-

ant as closely as I possibly could, as he was sitting on the left-hand side of the dummy. When they left the car they went in the direction of Bartlett. The young lady was tall and slender; should think a little taller than Theodore. I fix the date as April 3rd from the fact that I was invited to my granddaughter's, Mrs. Clancy McKee's, to lunch. I was invited to go to Alameda on the 4th. They were in conversation like any other gentleman and lady.

Cross-examined: I had no time-piece with me. Was at this time in about the same state of health as I am now. I sat on the inside, the right-hand side as you go in the car—the west side. The person whom I claim to be Durrant sat on the east side, on the dummy; his back was towards me; the back of his head was towards me. Don't know how many persons were inside the car; can not describe any of them. Don't know who the conductor was. Have seen Durrant two or three times at my son's, Mr. James F. Crossett's. I have spoken to him and he to me. Saw no one on that entire trip that I knew nor that I could identify. I have no recollection of any person that I saw on that day outside of the family; cannot recall anyone that I saw yesterday outside of my family. Have read the paper since the 3rd April upon this subject and have seen illustrations. Can't tell any time when I have been mistaken in the appearance of persons—very seldom. Have years ago been addressed by strangers by some other name, the persons taking me to be a friend of theirs and discovering

their mistake. Have been in very ill health for several years, and am now. Am 71 years of age; have lung difficulty and heart disease. Was not sick that day or the next.

Martin Quinlan: Am acquainted with the neighborhood of the Emmanuel Church and 21st and 22nd streets. Am an attorney-at-law. Was on the corner of 22nd and Bartlett streets towards the end of the afternoon of April 3rd. Took a car at the corner of City Hall Avenue—a Valencia street car—a few minutes before 4 to go to the corner of 22nd and Mission. Had an appointment at a saloon with David Clarke at 4. Rode to the corner of Valencia and 22nd and got off there. Walked down 22nd street on the right-hand side going down from Valencia. I walked very slowly—stopped once or twice. They were putting in a new track there—electric wires—and putting in a new road, so I was observing the streets. When I was on the south side from Valencia to Mission I saw a couple going up this way—a young man and a lady. Just as I crossed Bartlett street they crossed 22nd street; I stopped a little to let them pass. Had a good view of them; they were engaged in conversation. I can identify this young man. It was Mr. Durrant there; had seen him previous to this; cannot designate any place, but I have seen him in the neighborhood. His face was very familiar to me. Did not know him by name; knew he belonged in that neighborhood, having seen him around there on several occasions. Have lived in the neighborhood ten years and seen

everybody that belongs around there. Stood on the corner perhaps a minute, at last I lost sight of them. I noticed the package of books the young lady carried. It was not done up in paper; it was apparently tied with a string or strap, carried loosely in the girl's hand; but it was not a bundle in a paper. The young lady wore a dark dress all of the same material; she had no coat. The hat was a large hat trimmed with some kind of ribbon, bows or something. I should say that the hat is very similar to this. (The witness was severely cross-examined on every detail of his life and the doings of the day as to which he testified and his methods and movements of other days.) I first spoke of my testimony to Detective Anthony two or three days after the arrest. I told him I recalled the circumstance of the defendant's passing me; if I could fix the day and it fell on the day on which this girl was murdered, then I would be a witness. I subsequently was able to fix the day.

David Clarke: Am a laborer. Made an appointment with Mr. Quinlan at 4 o'clock, April 3rd at 22nd and Mission at the saloon; went there about half-past three. Waited for Mr. Quinlan about three-quarters of an hour, when he came.

Mrs. Caroline Leake: Emmanuel Church is diagonally across from my house, 124 Bartlett street; have been a member of it for 15 or 16 years. I attend the church twice a day on Sunday and Sunday school and Wednesday evening prayer-meeting. Known Durrant four years; have seen him generally at

church. Saw him on the afternoon of April 3rd between four and half-past. Was looking for my daughter who had come to town and gone shopping and said she would be back early. I was worried at her delay. Just before I saw the couple I had looked at my clock and it was 17 minutes after four. Looking out of my window I saw a young lady and gentleman coming up just before they had got to the gate. I saw it was Mr. Durrant. They passed in front of the church and went in the side gate near 23rd street. The young lady was nearer to me; she was on the outside and Mr. Durrant was on the inside nearest the building line. Her face was turned towards him and his face was turned towards her; they were talking. They were apparently coming from 22nd and going towards 23rd. The young lady was dressed in a dark dress and rather light hat, quite large. This is similar to the one she wore; the hat bears resemblance to the one the young lady wore. I lost sight of them when they went into the church gate near 23rd street. I cannot state who the young lady was; thought it was either Blanche Lamont or Miss Turner; they were both the tallest girls that were in the church so I judged from that that it was either one or the other. I could not see her face because it was turned toward him talking to him. I did not see Theodore Durrant again that day.

Cross-examined: Did not see what his dress was; did not pay any attention, nothing more than just casual look; knew he had a large hat, that was all. Have met

Mr. Durrant on several occasions at the church. Never spoke of my eyesight being poor in my life. Did not communicate that I had seen anybody whom I said was Durrant to anybody in April or May. I did say to one or two people that I "supposed." Told Mrs. Henry I supposed I had seen him; could not say whom else; only spoke to one or two about it; think I told my daughter, that is all; don't think I did until after I was subpoenaed. Told Mrs. Henry. I didn't tell her who, because I didn't want to get mixed up in this affair at all. Told her it was a supposition.

To Mr. Barnes: I stated to Mrs. Henry that I supposed I had seen the one because I didn't want to be brought into this trouble at the time; I was not ready to be a witness here.

Edna Lucille Turner: I have known defendant more than a year. Am a member of Emmanuel Church and attend the services at the church, the Sunday School and the prayer-meetings and Society of Christian Endeavor. Durrant was a member also; think he was secretary. Was not with him at any time on April 3rd nor at the Emmanuel Church at all on that day.

George R. King: Was a witness at the inquest and the preliminary examination. Am a member of Emmanuel Church and was the organist in April. Durrant was the assistant superintendent of the Sunday School. We were very friendly before his arrest. I saw him several times a week; visited at his house and he at mine. His parents visited our house. I am 19 and am work-

ing for Wilder & Co. Their business is advertising. On 3rd of April was a student at the Boys' High School then. Knew Blanche Lamont and Maud Lamont. About 5 in the afternoon of April 3rd I was in the Emmanuel Church. The church was closed, I entered by the front door, using my own key; have no key to the side door; the janitor, the President of the Ladies' Aid Society and Mr. Durrant had. Both Mr. Durrant and myself had keys to the library room. The door was wide open when I entered the church. No one else beside us had a key. Mr. Durrant gave me a key after we got the lock on the same afternoon. When I went to the church that afternoon the first thing I did was to go to the library to see if the gas that I smelt so strong was coming from there. I smelt the gas all over; tested it with a match around the joints; had to pass through the original library to get there. Did not notice anything at the time. When I went out of the door I closed it and went into the main Sunday School room. I sat down and commenced to play on the piano—I played two or three minutes—when Durrant came through the folding doors in the rear as if he had come from that direction and stood there a moment and looked at me. He stood in the space a moment and then passed through. I asked him what was the matter because of his pale condition. He had his coat off and his hat off and his hair was somewhat dishevelled. I stopped playing then; believe I remained on my seat. He told me he had been fixing the gas

above the auditorium upstairs and had been overcome by it to such a degree that he could hardly descend the ladder. He seemed ill. He handed me a fifty-cent piece and asked me to go and get some bromo-selzer. I went to the drug store on Valencia street and 22nd, bought 25 cents worth of seltzer, took the seltzer to defendant. I cannot recollect but it seems to me he was lying on the platform. Gave him the bromo-seltzer and the change; he took it in the kitchen and took a dose. I went with him, he asked me if I wanted a dose, I did not. We returned to the Sunday School room and he sat down and rested for a few minutes. I asked him why he did not get me to help him fix the gas and he said he had started for my house in the morning but he met Blanche Lamont on the way and had ridden with her to the Boys' High School. Then we went upstairs into the choir loft and we carried down a cabinet organ that was there. Mr. Durrant appeared weak and he had to stop two or three times to rest. We took the organ into the Sunday School room near the piano. Durrant was still without his hat and coat. He put on his hat and coat that was in there lying on a box in the corner. That was the first time that I had seen that hat and that coat that day; I had been there that afternoon when I first entered the church but had not seen them. After Durrant had put on his hat and coat we went out and locked the door and then went out the front door and jumped over the gate and went down the street. I locked the door with the key.

It was about six o'clock when we left the church. We went down Bartlett street to 22nd and down 22nd to Capp and there he left me. His residence was in the opposite direction to what mine was from the church.

In the church there was a hatchet and perhaps a saw in the janitor's rooms and there were a couple of tools in the pastor's study—a chisel that I saw. I have seen the hatchet frequently. Mr. Durrant used it when he put the lock on the library door to cut some wood—think the janitor gave it to him. Did not hear any noise in the church other than my playing and when we were moving the organ downstairs, and I saw nobody. Durrant and myself went home with Miss Lamont and her sister quite often. I acted as escort to Miss Maud Lamont and Durrant to Miss Blanche. We never entered the house, just took them to the door. This occurred Sunday evenings generally. April 10 as we were on the way to his house from the church he remarked how sad it was she had disappeared so utterly and how we were handicapped, we had no clew to find her. Never accompanied Durrant on any search he made for her; neither did he tell me of any search he had made for her. Had no conversation in reference to Blanche Lamont from April 3rd to April 10th. Think I was in the church the day before April 3rd in the afternoon. Saw some men fixing the gas fixtures. Durrant was not there that day while I was there. They were fixing the tips all over the building, putting on gas savers. There was a prayer meet-

ing at the church Wednesday evening, April 3rd. I attended and Durrant was there. There is a looking glass in one of the class rooms. Durrant went in to see if he was pale or if his eyes were congested. Before he went in he asked me if he was very pale or if his eyes were congested, and I said he was pale and his eyes were congested somewhat and after he came out of the room he said he was not so very pale after all. Do not remember I smelt any gas the day before the 3rd April. I can't say that the gas made me sick, don't think it turned my stomach. It made me faint at first. I took no bromo seltzer.

Cross-examined: Noticed the strong smell of gas immediately upon my entering the lobby from the open air. Did not notice it so much after I had been within for a while; grew accustomed to it. Found a free entrance to the church the same as on other occasions, it immediately yielding to my key. Did not take any notice of the larger room or anything in it. Mr. Durrant's hat and coat may have been there, there was nothing to call my attention to it. Applied a match to the gas joints and discovered no escape from that jet. Took no notice of the adjoining room. I locked the library door and thence went directly into the Sunday School room. It was about 5 o'clock. Don't know what caused me to raise my eyes from the keys of the piano. Was just attracted by an object in the doorway and I saw Mr. Durrant. His clothes were not in any way disarranged to my recollection. There was nothing in

his appearance that suggested any disarrangement of clothing or of his person by reason of a struggle. All I saw was that he looked pale and that his hair was a little unkempt. My question to him was substantially, what was the matter. Do not remember that he told me he was sick at the stomach. He complained all the time that he was sick from the gas. He took one dose and after that there was some appearance of nausea. When he appeared in the folding doors he had his coat off, his vest all buttoned, his shirt, collar and necktie in perfect order as far as I could see, nothing about his clothing disarranged. He said, "George, I have just been fixing the gas jets on the sun burners and the gas made me feel faint." Subsequently he said, "Feeling faint as I do, would you object to getting me some bromo seltzer?"

Durrant told me that afternoon he had intended to call at my house for me that morning to help him fix the gas in the afternoon, but having met Miss Lamont he took the cars down town and could not do it until the afternoon. Durrant and I have accompanied the Lamont girls home to Mrs. Noble's Sunday evenings; they had no other escort. On all these occasions he was entirely respectful in manner; there was nothing that he did or said that exception could be taken to. He was assistant superintendent of the Sunday school, assisted in the distribution of the books to scholars, was prominent at the socials, and assisted in lending his voice in the matter of vocalism and as

far as he could to entertain those who were members and visitors of the church. The piano upon which I was playing was a medium loud tone. I was playing *Un Ballo Maschera* about three minutes before I saw Durrant.

Frank Sademan: I was taking care of the Emmanuel Church on April 3rd as a janitor. It was my duty to see the church lighted at such times as was necessary. I knew about the electrical appliances to light the sun burners. They were in perfect order April 3rd. He did not report to me about the 3rd any defects about the electrical appliances or gas fixtures. The fixture in the lobby on the ground floor was in order on April 3rd, except that one key was a little loose and at times would slacken up and cause a leakage of gas. When the church was closed it could be smelt. At times when I found there was a leakage I would press the key tightly in its place which would stop all leakage. It was only enough to make the odor of gas hardly perceptible. I did not think it necessary to call a plumber in. Have sometimes left my room door locked and found it open; concluded that some one had a key to it. The pastor had a key, I do not think that Durrant had. That looks like the axe which I have used to chop wood with. Saw Durrant on 10th April at the church and on Friday afternoon the 12th April at the ferry landing. Casually asked him what he was doing there. He said the report was that Blanche Lamont was to leave the city that afternoon to go across the bay to visit friends and he was down there to see could he

see her. I was not going across the bay. I was looking for my boy. Durrant said he was taking an interest in finding her, since the detective that was engaged by the Noble family did not seem to be very efficient, and he said that he believed that all should take an interest and help to find her.

Cross-examined: I had a key to the belfry; know of no one else. About the 1st or 2nd April the Gas Saving Company put tips on all over the church. It frequently happened when I pressed the button it would not light all around or would not light at the first pressure; you might press one, two or three times or more. Have conversed with Mr. Durrant about it.

Adolph Oppenheim: Am a pawn broker at 405 Dupont street. Saw one of those rings between the 4th and 10th April in my store. That is as near as I can come to the date. This young man Durrant came in; he had this ring in his hand and say, "How much do you give me for it?" I take the ring, examine it and handed it back to him and say, "I don't wish the ring; I don't want the ring." The diamond was too small to be any value; then he asked me, "How much would you give me?" and I say, "I do not want it," and then he turned around and walk out. He had a long black overcoat, velvet collar and he had a slouch hat on. He remained two and a half to five minutes. The coat looks the same as the man had on what came into my store; the hat is also similar.

Cross-examined: There is no mark upon the ring by which I

can identify it. I never saw a similar ring except when he came into the store—it is the very same ring. I should judge the value is about \$2.50. They are manufactured in large quantities. He walked outside of the door, stood there for a minute then went up the street towards California or Pine. I just went a couple of steps after him then I went back in the store and sat down. When I seen it in the paper that Durrant was arrested, when I saw the pictures of the rings, I thought I had seen the ring before. That is the paper, it reads under the picture in large type, "Rings of the murdered Blanche Lamont returned to Mrs. Noble by the murderer." Only one or two called upon me on the 3rd April. One presented a stem-winding watch. He has a light moustache, looked like a farmer; he had a brown overcoat on. Had a white shirt and turn-down collar, gray hat. The other was a woman; she had a wedding ring—had a wrapper on; suppose she came from one of the houses of prostitution. I did not sell anything that day. On 4th of April there was a gentleman called, he had a gold chain. I have seen this silver corkscrew before, about three weeks ago. I could not tell by whom it was presented. I gave it back to him; I could not describe the party exactly. Saw this watch charm about the same time. It was presented by a middle-aged man. I could not tell if he has a moustache or whiskers. I could not tell you what kind of a hat he had on. He had a grey suit on; he was a very small

man. I have seen this watch before, it came about the same time as the locket. I think it came with the same person; I guess it was the same gentleman. There is a monogram there. I talked about the monogram. I think I was behind the counter at the time. I told him, "There is a monogram, the watch ain't so much worth to a pawnbroker if there is a monogram on it." I can not state if he had an overcoat on.

William Joseph Phillips: Am a cigar manufacturer. First saw Durrant the first part of April standing in front of Oppenheim's place on Dupont street, between ten and eleven. Saw Oppenheim about three feet inside of the door, looking at defendant; paid particular attention to defendant. He had on a dark slouch hat with a broad brim and a long overcoat with a velvet collar, with bluish tinge to the coat.

Cross-examined: I never could place it until I saw Mr. Oppenheim's picture giving his evidence and then the whole thing flashed across my mind where I had seen defendant. He attracted my attention because I took him for a mack—a man who lives on the income of prostitutes. He was dressed as if he had come out of a band-box. I have seen Oppenheim stand outside many times talking to the man who runs the shooting gallery. Have seen him sitting inside the door. When I saw this young man he made a motion with his lips that was very peculiar and something I never saw another man do yet and that made me notice him still more. Saw him do the same thing in

court here. Have stated frequently the police made a mistake in letting him shave his moustache off and cut his hair. I identify him, though; I think if his head had been shaved I would.

William F. Burke: Am a sergeant of police. This is the coat and hat I took from No. 1025 Fair Oaks street where defendant resided. Found it on a hat-rack in the hallway on Sunday, April 14th. Found some keys—a bunch in the overcoat pocket. (Defense admits that keys belong to King and Durrant respectively for the library door.)

Cross-examined: Had a conversation with Mrs. Durrant on Monday regarding shoes. We found the shoe; Officer Gibson and myself were at the house together. We found the shoe in one of the rooms. Mrs. Durrant said, "If you are looking for shoes he has got no shoes except the shoes he is now wearing—one pair of shoes." I said it is strange that a man like him is depending on one pair of shoes. I found but one shoe.

Leigh H. Irvine: Am a newspaper reporter. Interviewed defendant on 14th April, 1895, in the city prison concerning his whereabouts on the 3rd April. Made no threats or no inducements, except to publish the truth. He said, "I left home about 8 intending to go to the house of my friend, King, to help me in some electrical work in the afternoon. I met her at the corner of 21st and Mission streets. She said, 'You had better come along with me—you go near by my college.' We chatted along and

she spoke of 'The Newcomes' and said she would have to buy one. I said I would give her my copy—I would give her one I had—if she would come to the prayer meeting, I would give it to her or to her aunt. Wednesday I came to the church at 4:30 p. m. I took off my coat and hat and went up-stairs between the two roofs and fixed the electricity. I felt the effects of gas. My friend King was down-stairs playing at the piano. I took bromo seltzer. I helped George carry down the organ from up there. George and I left the church and went down Bartlett street to 22nd." He made no statement to me as to whether he had seen Miss Lamont after the morning ride.

A. J. Healy: Am a newspaper reporter. Had an interview with defendant three or four days after his arrest at the city prison. He told me that he had seen Blanche Lamont in the morning. I asked if he had seen her or met her in the afternoon, he said, "No, he had not."

Alvin B. Perry: Am the daughter of Mrs. James Crockett. I saw her on the 3rd April at Mrs. Clancy McKee's. Left with my mother about twenty minutes past three and went with her to Haight and Valencia. She took a Valencia street car and went out to 25th street and I went on into the city.

A. Anthony: Am a detective. Know May Howard Lanigan, Alice Pleasant, now Mrs. George Dorgan and Miss Minnie Bell Edwards. First saw them on April 5th afternoon at the Normal School. Went to see if I could get any information about

Blanche Lamont. First saw defendant on April 7th in the afternoon in the office of Dr. Vogel. He told me on April 3rd a little after 8 he met Blanch Lamont accidentally on 21st and Mission and she asked him to accompany her to school. They took the Mission street car and he went as far as Webster street and went to Cooper College and that is the last he saw of her.

Arrested him in Contra Costa. I took him in a buggy and drove him down to Walnut Creek and took the train for San Francisco. His chief Lieutenant Perkins objected very strongly; said it was an outrageous accusation.

Thomas Augustus Vogel: Am a dentist. The first conversation I had with defendant at the Emmanuel Church 7th of April I asked him if he knew that Blanche Lamont had disappeared. He said "No." I asked him the last time he had seen her and he said Wednesday morning, April 3rd.

William Sterling: My occupation is plumbing and gas fitting. Went to the Emmanuel Church on 2nd April to put some patent gas savers in. Mr. Anderson with me. We covered all the lights of the lower part of the church and upstairs all but the sun burners. I did not at any time hear any complaint from anybody connected with the church that the gas fixtures were

out of order or leaking. On the 2nd we left the gas apparatus in perfect order downstairs and there was no escape that I know of.

Harry Partridge: Am a student at Cooper Medical College. Durrant told me that he thought Blanche Lamont had either met with foul play or was enticed into a house of ill fame. She was an innocent girl who could be easily led and that anyone speaking to her she would respond to them.

Dr. Charles Farnum: Am a demonstrator in anatomy in Cooper Medical College. Wooden blocks were used there for the purpose of elevating the bodies and preventing decomposition; without them decomposition would be hastened. Don't know for what purpose blocks would be placed alongside of the head of a dead person.

Charles Schernstein: Am a music teacher—violin. I teach Blanche Lamont about two months; the last time, the 3rd April I expected her and she did not come.

Allen Church: Was janitor of the Emmanuel Church before Sademan. Theodore Durrant had a key that would open the side door and also the janitor's room.

Mr. Deuprey, Esq. outlined to the jury what the defense relied on.

THE WITNESSES FOR THE PRISONER.

Mrs. Isabella Matilda Durrant: Am mother of defendant, his father is in Court. We were married 30th June, 1870, at Toronto, Canada—that is my native place.

We came with the family to San Francisco 17 years ago and have lived here constantly since. My daughter Eullah Maud Durrant is 21; is in Berlin to perfect her

music. Theodore went to a private school when he was five; he has been going to school continuously since with the exception of his trips. He has been employed outside of school time in the Golden Rule Bazaar in vacation for nine years. He has done electric work for different persons. During the last five years he has attended the Polytechnic College and the Cooper Medical College; also employed with an insurance company. My husband was engaged in the shoe business in Toronto and has followed the same since coming to San Francisco. When we came to San Francisco we brought our letters from Toronto and put them in the Metropolitan Temple—Rev. Kalloch was pastor, afterwards mayor. We remained until the congregation disbanded. After the Emmanuel Baptist Church was built attended there.

On 3rd April defendant left the house shortly after 8. He was dressed in a blue suit, coat and vest of cheviot, pants of a different material but of the same color. Those are the pants my son wore on the 3rd April when he left our house; was dressed in the same clothes upon his return that evening shortly after 6; did not wear an overcoat between the 3rd and 15th of April at any time during the day time. About 15 minutes past 8 he said he was going over to the church. I next saw him about half past eleven in his room sound asleep. On the morning of 4th I called him as usual about 7. When he returned home the evening of 3rd I noticed he did not look very well.

Charles Reynolds: Am a po-

lice officer; in searching the church on April 14, I found a coat and three pairs of shoes in the pastor's study—old shoes. Do not recollect they showed any signs of dust. This is one of them. A red spot on the sole attracted my attention.

W. F. Burke corroborates finding of the shoes in the pastor's study.

Dr. William Fitz Cheney: At the Cooper Medical College delivered a lecture on 3rd April on the subject of "Infant Feeding." A roll was kept of the students present at that lecture, the names being called at the end. The lecture began at 3:30 and closed about 4:15. I believe the roll call to be correct because I questioned each individual student subsequent to that roll call as to his presence or absence and I have compared their answers with my roll call and found the roll correct. It would depend upon their statements. Have no personal knowledge now of that roll being correct. Mr. F. P. Gray called it, standing beside me at my direction. Know nothing of my own knowledge as to the presence of Mr. Durrant there that day. I know Mr. Durrant so as to call him by name.

Frank B. Gray: Called the roll of the class at the close of the lecture of Dr. Cheney. That is the roll book there. The markings in the book are to absentees and not to those present. There is no mark opposite the name of W. H. T. Durrant as being absent; all those opposite whose names the absent mark does not appear are considered present, and so far as the roll is concerned that book

shows that Durrant was present. Did not copy the roll into another book. The mark "X" opposite some names was made by Dr. Cheney and means that those parties were "quizzed" on that occasion. The letters "A" show who were absent and where there is no mark it shows who were present. On that page—third—were absent Dodge, Campbell and Garvin; Hill, Mierdierks, Murphy, Powell, Robinson, Smith, T. A., and Wise of the class were also absent. There are 74 names on the roll of that day.

Cross-examined: Have no personal knowledge of the defendant being absent at that lecture;

could not say that I saw him there.

William Fitz Cheney (recalled): There is no confusion among the students during roll call that would interfere with hearing the answers to the names as they were called or with obtaining a proper roll call. Consider the conduct of my students good and I insist upon good order. I have not had the roll call in my possession since the 3rd April more than three or four times; received it from Mr. Gray; it was put in my desk under lock and key and when it left my possession it was returned to Mr. Gray.

THE COURT announced that information had reached the Court that a gentleman had addressed himself to one of the jurors and that the Court felt it its duty to take some action.

Mr. Truman, one of the jurors, was called to the witness stand and said:

"I was riding on a car with Mr. Crocker, one of my fellow jurors. Mr. Crocker and myself were riding down Market street on the car when a gentleman came into the car and saw me there and accosted me without thinking, perhaps, what he said. He should not have made the remark that he did. He made it thoughtlessly and without any intention, I think, of influencing me, or without thinking what he said, but he did make the remark. He only made the single remark and then went on with other conversation. The remark was simply to the effect—that if you do not hang him, we will hang you, meaning, I thought, of course, the defendant, because he knew I was a juror. The gentleman was H. J. McCoy, the secretary of the Young Men's Christian Association. He was an acquaintance of mine. He made this remark in a public car, in a loud tone.

THE COURT. What effect did it have upon you, Mr. Truman, if any?

No effect. It was an idle remark made by him. I do not think he intended anything at all by the remark. I would never have thought of it again. It received no lodgment in my mind and in no manner had any effect upon me.

THE COURT made an order citing H. J. McCoy to appear and show

cause why he should not be punished for contempt. *Mr. McCoy* came into Court, admitted the making of the remark, stated that it was a thoughtless, idle remark, and made an apology for doing so. THE COURT considered the offense a grave one and fined Mr. McCoy.

Leonard Everett: Called on Mr. Oppenheim on September 7 and presented a locket. I had a brown hat, brown mixed suit, a blue negligee shirt and black necktie on that occasion. Did not wear any moustache nor any whiskers, nor did I have an overcoat on. I should judge that Mr. Oppenheim was very near-sighted.

Cross-examined: Am a member of the Signal Corps to which defendant belonged; went to school with him. Have subscribed money for this defense.

Marvin Curtis: At your request visited Mr. Oppenheim to see if I could pawn any article there; that is the watch I took. Wore a moustache same as I have now and had no whiskers nor any overcoat. Had the same clothes as I have on—a black sacque coat and gray trousers and a gray slouch hat.

Cross-examined: Have known him about ten years; did not go to school together. Am a member of the Signal Corps. Have subscribed money for the defense.

P. J. Neuman: At your request visited the store of Mr. Oppenheim; made an attempt to pawn my watch the first part of September. He told me that the watch was not so valuable to a pawnbroker on account of the fact that the monogram was on it. Had dark brown suit, coat, vest and pants, brown derby hat. Did not wear a moustache.

Cross-examined: Am a gradu-

ate of Lincoln school; was acquainted with defendant while he was attending there.

William P. Cathcart: On 24th August I visited Mr. Oppenheim; took a corkscrew with me. Was supposed to go there and see how he should look at that and examine it. Had on a dark coat and vest and light striped pants, a soft slouch hat, the same as I have now in my hand and striped pants, black sacque coat and striped pants. I wore neither whiskers nor moustache.

Patrick Dorsey Connolly: Reside at San Rafael; am in the saloon business. W. J. Phillips made a statement to the effect of having seen Mr. Durrant in front of Oppenheim's place of business. He said he was going along by Oppenheim's store and he saw Mr. Durrant by the door and Durrant speaking to him. Durrant acted like as if he had something in his hand and was tossing it in this manner as if he was throwing it up and down. Said that he found a picture, tacked it on the wall, a slouch hat over it, and that after he had done so he could identify every feature.

John Patten testified that the reputation of David Clark for truth, honesty and integrity was bad. Likewise testifies *Patrick Mulvaney* and *M. L. Murphy*.

A. W. Hoishalt: Am a physician residing in Stockton. I lectured in the college on 4th April, 1895, between 10 and 11. Have the roll of the class as kept by

me and called at that time. In the majority of cases it is called before the conclusion of the class; think it was called before the lecture that day. Mr. Durrant was marked present on that day.

Cross-examined: Have no personal knowledge outside of what is penciled in my roll-book. Do not remember whether he was there or not.

George A. Merrill: Am principal of the School of Mechanical Art. On April 5th about 11 defendant was in my company about ten minutes; stated that he dropped in to see the school; turned him over to teacher Oliver Goodell.

Cross-examined: Miss Lucille Turner was a student at the school at the time Durrant visited it.

Malcolm O. Austin: On 3rd April attended the lecture given by Dr. Cheney between the hours of 3:30 and 4:15 p. m. I did not answer for the name Durrant.

All the classmates marked present were called and testified substantially the same as the witness Austin.

H. F. Field: Am in the jewelry business. People's Exhibit "N" is a ring very common in this community and has been for several years past. Value of the ring I should think about \$18 a dozen at wholesale and at retail about \$2.50 or \$3.00 apiece.

C. L. Garvin: Have no recollection of seeing defendant there at that lecture. As a matter of fact I was present. (The witness' name being marked as absent on the roll-call of the lecture of Dr. Cheney of April 3rd.)

F. W. Ross: Do not remember

whether it was on the 3rd April or not that I was with Mr. Durrant at the Cooper Medical College about the hour of 1 p. m. and taking a walk with him from thence on Webster street to Broadway; can not fix the date; remember it was the first week in April. We sat down and over-looked the bay for five minutes there.

Cross-examined: I mentioned to Dr. Cheney that on this occasion Durrant and I had lunched in a restaurant on Fillmore street, I think.

E. H. Carter: I would not state the date when I met students Ross and Durrant on the way from the college along Webster street to Broadway; believe it was somewhere about April 3rd.

Oliver S. Goodell: Am a teacher over in the School of Mechanical Arts. Saw defendant at the school between 11:15 and 12:25 on 5th April.

Cross-examined: He told me that he came down to see the school; did not mention any individual in the school that he desired to see. Do not think I told Mr. Taggart that he came for the purpose of seeing Miss Turner, but thought he did.

Miss Carrie Cunningham: Was a reporter on the *Chronicle* on August 15 and 16. Am the author of an article published in the *Chronicle* August 16th headed "Saw Blanche Lamont Lured to Her Death." Obtained the information upon which this article is based myself.

Barclay Henley, Ransome Powell, W. A. Read, L. J. Hall, A. D. Laughlin and C. W. Kellogg testified they knew Mr. Quinlan

when he was a resident of Santa Rosa and in their opinion his reputation for truth, honesty and integrity was bad. Each of the witnesses admitted that he had not heard anything about Quinlan for ten or twelve years and had nothing special to base their opinions on.

The following testified that the reputation of Theodore Durrant for truth, honesty and integrity and for peace and quiet was good: *P. D. Code, Albert H. Martin, Andrew Davis, James McCullough, John A. Sievers, James Cummings Smith, E. R. Keith, Alexander H. McDonald, Donald McIntosh, George Frier-muth, W. Z. King, J. A. McCul-lough, Herbert C. Porter, Frank Dalton, Edward A. Bunker, Dr. Marion Thrasher, George Daly, W. D. Bond, W. Trinkler.*

These witnesses had either employed the defendant or knew him as his classmates and members of the Signal Corps.

M. Vogel: Am the husband of Mary Vogel. My wife never did use glasses in reading. We bought all the papers, the *Call*, *Chronicle and Examiner* and the rest and read the testimony and everything about the case.

Leonard Everett: I made a trip at the instance of the attor-

neys for the defense by car and on foot from Sacramento street corner of Walnut to the home of Mrs. Crossett on San Jose avenue. Mr. Curtis who was with me made a memorandum of the different times.

Marvin Curtis corroborated the witness Everett as to the time.

H. N. F. Marshall, Jr., called for the defense examined by Mr. Dickinson, testified: During the month of May last was a reporter on the *Call*. Know detective Gibson; had an interview with him on Sunday, April 14, in the detective's room in the new city hall. Mr. Gibson told me that there had been a No. 9 footprint on the belfry stairs.

C. A. Dukes: Was a student at the Medical School. Have not any recollection of defendant's being at the lecture of Dr. Cheney. I sat on his right and he on my left—immediately adjoining seats.

Edward A. Diggins: Have attended Cooper Medical College over a year. Had a conversation with him there on the first two or three dayse of April last regarding an atomizer; can not state the day. Some one was present but do not remember whom.

THE PRISONER'S STORY.

W. H. T. Durrant. My age is 24. First met Blanche Lamont in September, '94, at Emmanuel Church. I was introduced to her by Mrs. Noble. I officiated as usher in the morning services and assisted in the choir work. If the electric apparatus of the sun burners happened to get out of order I was the one to look after that. Met Miss Lamont on the morning of April 3rd at the corner of 21st and Mission about 8:15. Was on my way to George King's house to ask him would he assist me in the afternoon with the electric apparatus at the church. She said she was going to school, that she would be pleased if I would accompany her, saying that my direc-

tion was the same as hers, leaving my visit until the afternoon. Conceded to the request and we got on the car together. She was going to the Lowell High School on Sutter street, between Gough and Octavia. She alighted and I continued on to Webster. Have never seen Blanche Lamont since that time. I continued to the college, Webster and Sacramento, to attend my daily routine of work. Am a member of the senior class and have attended about two years and a half. The noon recess occurred between the hours of 12 and 1. I walked up Webster street to the corner to a fruit store. I was not feeling well enough to take lunch. Was gone from the college about one hour—did not meet anyone. I came back to college—I do not recollect meeting anyone on the walk. I entered the college hall and saw a notice: "Dr. Stillman will not lecture today." Went out and met student Ross. We went up Webster street to Broadway, we met student Carter; were gone about three-quarters of an hour, then we returned to the college. Went upstairs into the library, had a conversation with student Diggins with reference to a malady with which he was afflicted—catarrh. Mr. Glaser came in and he and I went into Dr. Hirschfelder's clinic room to quiz for awhile before Dr. Cheney's lecture. He commenced about 3:30. I attended that lecture. It lasted about three-quarters of an hour. There was a roll call at its close. I was present at that lecture and answered my name when it was called. I took notes. I don't know whether they are very full or not. Those are the notes taken at that lecture and in my handwriting.

At the close of the lecture I left the college and went by the cars to the church. I entered by the rear door on the south side; was alone during all that time. Conversed with and met no one that I knew on that occasion. My object was to repair the spark vibrator on the gas jets in the upper auditorium in what is known as the sun burner. I went straight through to the library after opening the south side door which found unlocked. On my way to the library I removed my watch from my vest pocket and placed it in the breast pocket of my coat to guard against it dropping out of my pocket. I noticed the time when I changed my watch; it was five minutes to five. I removed my coat and folded and laid it on a box, and laid my hat on top of it. I had a key to the library room. George King had also. When I went out of the room I left the door wide open. I looked in the library table drawer for a card which I had left there the preceding week. Then to the south stairs leading to the auditorium, the front of the church, went up the stairs into the auditorium room. It occurred to me I might just as well go up into the gallery and plug the electric button and turn on the gas to save me the trouble of running up and down stairs at each adjustment of the burner. I saw the ladder lying there in the gallery and went up through the false door, plugged the button and turned on the valves about half force and raised the ladder and went through the false opening that is in the front end of the space between the two ceilings. I went to the first sun

burner over the rostrum, the eastern sun burner, took my nippers and a little screw driver out of my pocket and laid them down alongside of me and removed three of the plates. I leaned over and I tried the spring and noticed that it was a little stiff and then disconnected this wire that leads to the push button down in the gallery. I turned the gas on so as to have sufficient force there to effect the spark. After adjusting this spring I attached the wire again and it lit the burner. I dusted off the remainder of these burners, and with a small card I just ran through the slit that is in the top of the tip and then I lighted them all around with the burning card. I left them burning there and I got up and I put in the three plates back again and picked up my nippers and screwdriver and went back again to the ladder. The gas was escaping while I was working. I inhaled the gas to a certain extent. When I entered the church the smell of gas was quite perceptible downstairs; upstairs I did not notice it so very much. It made me feel sick at my stomach. There was nothing the matter with the gas when I went up to fix it; the only thing that was the matter was the burner itself, it wouldn't light every time that you pressed the button. The sexton complained to me several times of it not lighting immediately when he touched the button and I told him it simply needed adjustment. I know nothing about gas but just the electrical appliances attached to it.

I commenced to feel nausea about half a minute after I had been at work just before I left the sunburner; the feeling came over me as I was lying prone. After I got through with the electric business I was in the gallery near the place where the push buttons are, the gas valves. I went down the gallery stairs to the auditorium, through the auditorium to the choir loft, the door which I had previously opened, my object in going down that way being to close it. I closed it, went down the back stairs where the organ was afterwards carried, and then into the children's Sunday school room, and from there through the folding doors into the main room where George King was playing the piano. First heard the piano being played as I was reversing the plate on the sun burner between the ceilings—and from that time on until I went down and into the Sunday school room. I said, "Hello, George, I heard you playing and came down-stairs." He said, "You look rather pale." I says, "Yes, you would be, too, if you had been through what I have been through." I told him I had been fixing the gas burner over the rostrum, and that the gas had made me feel faint. He made the remark about having to carry the organ down-stairs, and I asked him if he would go to the drug store and get some bromo seltzer to settle my stomach before we went at that work. He did so; I handed him the money and sat down on the platform right where he was playing the piano. I just stretched myself out there with my hands under my head and laid there until he returned. He and I walked into the kitchen together. I undid the bottle and put a little water with it and drank it, and I made a rather wry face

over it. I asked him if he would not like some of it, and he said, "No, not if it is as unpleasant as you make it out to be." Then we sat on the platform a few minutes, and went up-stairs to bring the organ down.

I have been in jail constantly since my arrest, 14th of last April. I weighed a little less than 122 pounds. I have not been a member of any athletic club during the last four years. After we placed the organ alongside the piano I asked George, how do I look now and he says: "You are looking pretty well." I says, "Hold on a minute and I will go into the ladies' room and see," and came out and made the remark that I did not look very pale. He said, "No you don't now," and then we went into the library. The door was not as I had left it. It was closed and locked. I opened the door with my key and went in there. Got my hat and coat and put them on.

There was nothing to interfere with my going that way, putting on my hat and coat and leaving the church, and from my work, without anyone seeing me who was sitting at the piano in the Sunday school room. I had no means of going in and out of the front was myself. The janitor and Mr. King and I think Mr. Taber, had. The door was partly open as we went out. There is an iron fence across; we just jumped over it. We walked down Bartlett to 22nd. I left him on the east side of Mission. It was a little out of my direct route home. A few minutes after leaving King saw Mr. Hall employed with Dr. McDermott a druggist. He was standing in the doorway and I passed the time of day with him. He made the remark that he was watching his little boy playing on the sidewalk with a number of other children. Across the street in the middle of the block there was a lady standing in her doorway and a little girl on the steps; stopped to speak to them. It was Mrs. Herne—her husband was officiating in the choir. I arrived home about half-past six. The evening meal was in progress. I took very little dinner, went to my room and remained there about an hour. I was looking over a few of my studies. Then my mother called me and I saw her to the car on Guerrero street near 23rd. A Miss May McIntosh was in her company. I went straight to the church and arrived there about ten minutes after eight o'clock. I met in the hall Mr. Sademan and went into the room and sat down behind Mrs. Dr. King, asked her how she was. Then Mrs. Noble entered the room, I leaned over and asked her if Miss Blanche was coming that evening, saying that I had ridden to school with her in the morning and during the ride I had offered her "The Newcomes." I remained until the services closed, about nine. I left with Dr. and Mrs. King and their son George and left them on the sidewalk, I going in my direction and they going in theirs. I went directly home; there I looked over a few of my notes and then retired. On April 3 I was dressed in a dark suit, coat and vest of blue cheviot and a pair of trousers that were of a blue material. I identify the garments I wore on that day. I did not change either of the garments from

the time I was dressed in the morning until I retired in the evening.

Two persons had keys to the library—George R. King and myself. When fixing the library door lock I used a hatchet part of the time—it seems to me with a shorter handle than this and much lighter. I had nothing to do with placing this hatchet where it was found in the belfry. I never wore an overcoat during the day on any day between the 1st April and the 11th April. On the 4th April between 10 and 11 I was at Dr. Hirscholt's; he was lecturing on physiology or physiological chemistry. I have notes of that lecture taken by me at that time and in my handwriting. Upon 5th April between 10 and 11 was in the clinics at the City and County Hospital conducted by Dr. Ellinwood, Dr. Rixford, Dr. Hirshfelder and Dr. Collins. Did not keep my notes of those clinics. About 11 went to the Lick School of Mechanical Arts. Between 10 and 11 on 6th April I was at Professor Plumer's lecture at the Medical College. On 8th April between 10 and 11 was part of the time in the surgical clinic in the City and County Hospital and part of the time at the post-mortum examination that was being held at the dead house. I took some lunch and some money to the Hiberian Savings and Loan Society (The bank book produced showed the entry that day). On 9th between 10 and 11 I was at the lecture on surgical anatomy held by Dr. Rixford. On 10th during 10 and 11 was at a lecture by Dr. Rixford in the place of Dr. Cushing on the diseases of women.

I was not on any Powell street car during that day nor on the car between Market and Clay streets. Was not on a Valencia street car going westerly and southerly from the junction of Haight, Market and Valencia street at any time on the afternoon of April 3. Did not enter the southerly gate or entrance to Emmanuel Church with any person on the afternoon of April 3 between 3 and 5. I never had anything to do directly or indirectly at any time with any violence inflicted upon Miss Blanche Lamont. Have never at any time visited the place of business of Mr. Oppenheim; I have never seen him nor had anything to do with him at any place or time.

Cross-examined: I am 24. My birthday is 24th April, 1871, born at Toronto, Canada. Was a member of the Bible class of the church for quite a while. Have held in the Sunday school the official position of assistant superintendent. Up to the time of my arrest, I attended Emmanuel Baptist Church and the Sunday school regularly, with very few exceptions, on Sundays. I usually attended the services in the morning and evening and the Sunday school classes in the afternoon. Was usher in the church, assisting to show people to seats. Have entered very infrequently the church on week days. Have had nothing to do with the carpentering at the church more than to put up a stage for an entertainment. Have had nothing to do with any gas fixtures. Have repaired the sun-burners several times, that is, adjusting them. I repaired them in January previous to the 3rd April at the request of one of the

trustees. Have been requested to fix the electric apparatus in the church by Mr. Sademan. Had been in the belfry three or four times previous to my going up there with the jury. The last occasion was when they were bracing up the belfry. After Mrs. Noble introduced us I saw Miss Lamont about every time she came to the church until her disappearance. She came usually on Sundays. I was a member of the Christian Endeavor Society; Miss Lamont was also; she attended those meetings from October until April. Frequently I was in the habit of escorting Miss Lamont home from church; have at times carried her violin for her to her home. Never entered the house when I saw her home. Visited her at her house not more than three or four times prior to April 3, 1895. Also escorted her on a ride on the Mission street cars; we went to the end of the line and came back on the same car and I brought her back to her home again. Also escorted her to the Golden Gate park. Had never escorted her to school prior to April 3, 1895. The first lecture that I had to attend began at ten. I left my house about 8. I met Miss Lamont that morning on 21st street right close to Mission; I stated to her that I was on my way to George Kings' house to get him to assist me to fix the apparatus in the church. I had seen George King the Sunday previous, there was a conversation pertaining to the bringing the organ down stairs some time during the week; stated that I might be there myself sometime during the week. Do not recollect any conversation with him at that time in relation to fixing the electric burner. There had been a complaint to me by one of the trustees, if not Mr. Sademan himself. They were mentioned to me that the lights would not work at the first press of the button and I said I would look at them during the week. Mr. Sademan mentioned about the press of the button a number of times; the last time was on the Sunday previous. I think Mr. Code mentioned to me about the sunburners not lighting readily.

I know Herman Schlageter and heard his testimony. I did not state that Blanche Lamont had been led astray and had got into some house of ill-fame; I said it was possible. Had ridden to the college with her and then the boys as the slang phrase is, joshed me about her disappearance. On 12th April I did not say to Mr. Sademan that I was watching there to see Blanche Lamont go over to Alamada. He asked me what I was doing there and I replied that I had been informed that Blanche Lamont intended leaving the city. I obtained it from a gentleman on Post street, Friday shortly before noon. He tapped me on the shoulder and said, "Is your name Durrant?" I said, "Yes." He said, "You are interested in the Lamont disappearance are you not?" I said, "No more than anyone else is." And he says, "Take my advice and watch the ferries this afternoon." With that he left me and walked down Dupont towards Market. He did not give me his name; I did not ask it; I had never seen him before or since. Have had search made for him but have not located him.

I knew at this time from the paper that Blanche Lamont had disappeared and that my name had been mentioned in connection with it. Prior to seeing it in the newspapers I did not call and offer my services to Mrs. Noble; it was subsequent to 8th April. I made no effort at that time to find this man, to follow him, nor to know who he was because I was so thoroughly happy to know that I was on such a clew. I went to the ferry as soon as I could get my lunch and watched between the two ferries, remained until about twenty minutes to five. Besides Mr. Sademan I saw Mr. Dodge and Mr. Dukes. I did not mention the fact to them of what I was waiting for because it was not uppermost in my mind at that time. nor from the conversation they addressed to me, although I was there for the purpose of seeing this girl who had been lost and whose name had been connected with mine in public print. They did not ask me what I was doing there. Their first questions to me were, "Well, Durrant, have you found the girl that is missing yet, or the girl you ran away with?" I said, "No, but I was on the track of her," and then they were in a hurry to catch the 3 o'clock boat. They went in the direction of the Creek route. I asked them, would they be up in the college in the morning, and they said they would, and I asked them, would they see that I was marked present on Professor Plummer's roll—to call for me at the roll-call. It is not a fact that I said to them that I was waiting for some friends of mine, some members of the Signal Corps. They asked me why I wished my name called on the following morning, and I said I was going away with the Signal Corps the following day, and that I expected one of them across that evening. I did not tell them that I was waiting for Blanche Lamont; that was not mentioned at all. I was waiting for members of the Signal Corps; was not a member. I was not waiting for Blanche Lamont and this is the fact and nothing else is the fact. I did not state to Mr. Dodge that I was waiting there for some of the boys of the Signal Corps. At the ferry I also met Mrs. Wilming the sister of student Partridge; we conversed two or three minutes. After I left her I jumped on the Mission street car and abandoned my waiting to go to the Armory to prepare my things for the following day. I went to the Christian Endeavor society that night and saw Tom Vogel there. Did not tell him; did not mention it to anyone there. That meeting was at Dr. Vogel's house. They were all acquainted with Miss Lamont. I did not mention this fact because it did not occur to me to mention it. Knew Minnie Williams in her lifetime. After my arrest I did not deny to several persons that I was at the foot of Market street at all upon that day.

The afternoon recess at the Cooper Medical College on 3rd April was between 3 and 3:30; also one between 12 and 1. During the noon recess I left the college a few minutes after 12. A number of us went out together and dispersed in several directions at the door or at the corner the college is on. I walked across Webster to the fruit store on the corner; purchased a few mixed nuts. I did

not feel well that day and did not care about paying full price for a meal; did not intend eating; took the nuts instead of my lunch; stood at the corner of Broadway and Fillmore and then went over to the northwest corner and sat down on the fence and ate my nuts and left the shells on the ground. I took the same road back again to the college. The walk took me in the neighborhood of three-quarters of an hour. I passed into the ante-room to see if there had been any mail left and glanced at the blackboard and noticed a sign that Dr. Stillman would not lecture, so I walked out again. On the sidewalk I met student Ross; I suggested to him that we walk over in that same direction from which I had come. He says, "Well, what is the matter with Dr. Stillman? Aren't you going down to Stillman's lecture?" I said, "There is a notice on the board saying that he will not lecture." He said, "All right," then we went on the walk. We met Mr. Carter going in the opposite direction towards the college. He was saying, "Boys you are going the wrong way, you had better come back to Stillman's." Mr. Ross said all right, we would be back later, and he passed on to college and we continued our walk. Just below the brow of the hill we sat down on a bench overlooking the bay; remained about twenty minutes. Then we walked back to the college and went directly into the building; Ross did not go in because he was smoking. I went upstairs to the library; don't recollect having seen Mr. Ross again that day; he was a member of my class. I ought to have attended Dr. Hasen's lecture on the subject "New Remedies." I attended no lecture until 3:30.

When I met Miss Lamont on the morning of 3rd April she was dressed in a black dress with a large light hat. This one is of similar appearance. I did not put that hat beneath the floor of the belfry of Emmanuel Baptist Church. I do not know who did. This is I think the skirt that she wore. I did not conceal that shirt in the belfry nor any of those things of hers. I did not place that hatchet there; I do not know who did. I did not come down from the belfry, I came down from the ceiling and passed through the church and came into the Sunday school room. On the 3rd April, all other things being equal, I expected to graduate in December of the same year as a doctor of medicine.

On the afternoon of April 3 I entered the church from the southeast side door through the south gate on Bartlett street which was not locked, nor the door either. I had a key to my own house that would unlock the door of the church and would unlock partially—just start the bolt—of the janitor's room. I went first to the library to lay my hat and coat away and to get my library card for my book which I had taken home the week before. When I went out I did not lock the door. I changed my watch from my vest to my coat on my way through the Sunday school room; I looked at it then and saw that it was five minutes to five. The card had been lying there since I had taken the book. I did not see anybody in the church before I saw George King nor did I

hear anyone before I heard him playing the piano. I first heard him when I was over the automatic burner in the ceiling—the false ceiling above the sun burner over the rostrum. I do not know the piece he was playing, but I heard him almost as soon as he struck the keys. It was on the top of this false ceiling just as I was arising from the sun burner—I was just starting to lay the plates back in place when I first heard King playing.

I did not write a statement enclosed in an envelope addressed to General Dickinson and Mr. Deuprey and write at the bottom of the envelope "To be opened if I am convicted and to be returned unopened if I am not convicted." I never saw Blanche Lamont after she left the car near the Lowell High School on the morning of 3rd April, 1895, neither dead nor alive and never at any time laid eyes upon her after that morning dead or alive.

I may have heard some noise when I was fixing the sun burners but I cannot recall any special noise—nothing that made any impression on my mind and that I can now recall. My statement to Mr. Morrison, a reporter, on the evening of my arrest that "I went to the church between 4 and 4:30 o'clock" had reference to what time I started to go there. To Lee H. Irvine of the *Examiner*, on the evening of my arrest I did not say "Wednesday I came to the church at 4:30 p. m." If any such words were taken down they were taken down with my intention of saying that I left the college some time after 4 o'clock. Sometime between the publication in the paper and when I was arrested I stated to student Schlageter that on the 3rd April it was Miss Lamont that was on the dummy with me. I spoke first when I came to the entrance. I said, "Hello George!" He answered back just about the same, "Hello Theo, you look rather pale." He said "What is the matter with you?" I said, "You would, too, if you had gone through what I have." It is not a fact that when I came to the opening of the doors I stood silent until he had spoken to me. I walked straight through the door; I did not pause one way or the other. He may have spoken first, I probably did not hear it, but it is my impression that I spoke first. I did not come to King with the idea of sending out for the bromo seltzer; I had not thought of it before I got to the door and not until he asked me about the organ business—about bringing the organ down. I knew the Sunday previous that he was going to be there. I knew it was some day during the week—took it to be Wednesday evening that it would be needed. I did not know or understand that he would be there at that time. To my knowledge he was at labor all day except when he was studying at home during that month. He was in and out of the church during all times. My object in notifying him on Wednesday morning, April 3, was to tell him I would be there if it was possible for me to be there some time that afternoon, and I did not know whether I would catch him home in the afternoon.

There was no lecture that I ought to attend between the hours of 4:30 and 5:30. I have carried this lecture card ever since I

started in last February. I was not in possession of it at the time of my arrest. It was at my home and went with the rest of my college effects to General Dickinson and was given to me again about a month ago to refresh my memory upon the time of different lectures.

In our house on the night of 3 April I had this coat and vest, the ones that I now have on, a cut-away coat and vest of dark material termed clay worsted; also a Prince Albert coat and vest of the same material. I had a black pair of corkscrew trousers which I used for special occasions and a dark pair of blue cheviot trousers that I wore all day April 3 and blue cheviot coat and vest. I had the overcoat that has been admitted in evidence and no other.

Those notes of the lecture of April 3 were taken by me; this is the note book I used at that time. It was on the 3rd April in the same condition that it is now as far as those notes are concerned, after the lecture of Dr. Cheney; have made no alterations in the notes. It is no such fact that I did not have a note of Dr. Cheney's lecture on the 3rd April. I may have taken notes on student Glaser's reading on the 10th April. Dr. Graham visited me at the city prison on the 20th April after my arrest in company with Dr. Donegan. I did not state to Mr. Donegan that I desired to speak to Dr. Graham in private. No such conversation took place between myself and Dr. Graham to the effect that I didn't have the notes and that if he would let me have his notes I could establish an alibi. "Look here, Durrant," he says, "you are in a bad place and I am sorry for you; I want to be a friend of yours. Have you got your notes of Dr. Cheney's lecture? It is an important point." I said, "I don't know whether I have them or not." He says, "Well, if you haven't I will help you out of it." I said, "All right, bring all your notes and I will use them in comparison." I absolutely didn't do anything of the kind as to ask him to take his note-book out and leave it at my house, where it could be brought in by my mother. There was nothing ever said about an alibi or anything else. I had no idea of an alibi at that time. My idea was to follow instructions, to get the notes of one or two of the boys, to see them for comparison with the notes I had myself, or that General Dickinson had. I was told to do so by some one of the attorneys. I secured nobody's notes, for the simple reason that there were none brought to me. I asked Graham for them in the manner I related, but it was at his suggestion and not at mine. That is the only party that I broached the subject to. Mr. Glaser never called on me. I was spoken to about it by Mr. J. J. Gallagher. He visited me one day and asked me if I had the notes of Dr. Cheney's lecture and I told him I did not know. I was first notified by my attorney that I had the notes. I knew that I was at Dr. Cheney's lecture, where I was seated, and that I had my note-book. I do not know whether or not at that time I took notes. How would you expect me to know whether I took notes at that time? During all that hubbub I could not recollect. I forgot it at the time I was arrested

and remembered it on the afternoon of April 17, by my recollection being called to the notes by Graham. I did not know whether I had full notes or not, but I knew I had notes. I had been over my notes before the 10th April, when Mr. Glaser told me particular points I had left out, and shortly after that I wrote in what Glaser told me. So I practically went over the lecture on the 10th April to see if I had left out any particular point. I knew that it was public gossip that the girl had disappeared on the 3rd April, and also knew it from conversation with Mrs. Noble about the 10th and with Tom Vogel by the 7th, and by conversation with many other people. I knew that my name had been connected from seeing her in the morning, but it was not connected in any other way as far as I knew at the time. I knew at the time of my arrest it was essential for me to establish where I was on the afternoon of the 3rd April, but I may say that up until that time I had never heard the word "alibi" and I did not know what it was. I know what it means now. I did not know that it was a legal defense to a criminal action. No copy of Mr. Glaser's notes was ever handed me for my use. I didn't know of any such fact except from reading it in the paper.

I walked between Market street and the Sausalito ferry back and forth and watched the different boats that came in—both ways. As I was watching the boats my feeling of gladness at the clew I had received sank perceptibly and passed away decidedly. I watched the steam pile driver that was there and had a casual conversation with a stranger to me, the Deputy License collector. I never saw him before or since but I would know him again.

I reached Cooper College on the morning of April 4 at 8 o'clock. The first lecture I attended April 8 was 9:30 until 10:30. The second lecture, a clinic under Dr. Hirshfelder, between 10:30 and 11:30 I did not attend. There was no roll called at the first lecture. The monitor just glances around and sees who is there, and marks those present and absent, and if they come in, and he sees them, he marks them, and if not, it goes without. There was a roll-call at the clinic. I asked Student Partridge to answer for me. I was marked present for a moment until my name was called again to be quizzed, that is, my name was called, I was not there. At that time I was on my way home. I had an errand to perform that morning. I may have gone to one bank that day; I am not sure, but I went to the coal yard on Mission street to order coal. I got there some time between 11 and 12. I had had my lunch. I was not at Dr. Hansen's lecture on 3rd April; it took place from 2 to 3.

I did not write that name and address; it is not my handwriting nor is it my printing—nothing to do with me whatsoever.

Mr. Barnes. I offer to introduce in evidence pages marked by this defendant as being in his handwriting; not for the material that the page contains, but as examples of the handwriting of the defendant. (Referring to pages of minutes of Christian Endeavor Society.)

Mr. Barnes. Do I understand you as stating to me as a finality upon your cross-examination that you never at any time since your detention upon this charge addressed an envelope to General Dickinson and Mr. Deuprey marking upon the envelope, "To be opened in case I am convicted and not to be opened if I am not convicted?" I addressed no such envelope.

Did you not show both of the envelopes to Miss Carrie Cunningham? I did not.

Did you upon the 1st October at the county jail say during a conversation with the same party in reference to the Emmanuel Baptist Church: "When I was fixing the sun burners I heard a noise and followed it to the belfry and looked through the open spaces and saw her on the second landing. She was murdered on the landing?" Those are not my words. There was a story brought to me by Miss Carrie Cunningham like the story concerning the "Sweet-pea" girl, which afterwards was printed in the paper, purporting to be a rumor, as she said, that she gathered from somewhere about town, saying that I heard a noise, while fixing the gas burner up between the ceiling and that I had followed that noise—looked about to see what it was—and had discovered what you make reference to. I neither affirmed her story, nor did I deny it, as I have done to every reporter who has brought any story to me whatever; but I did do this: I said to her, "Miss Cunningham, do you intend publishing this story?" She said "No." I said "If you do the same as you did with the sweet-pea girl story, you will get me into trouble, and into a lot of trouble, and put me to great annoyance, like you did by that sweet-pea story." She said, "I will take my oath I will say nothing about this whatsoever until it can be proven," and she stood upon the box there and took her oath and solemnly promised me she would say nothing about any such story until it should be so proven. Now, I ask for the proof to come forward, that is all.

Mr. Barnes. On the 5th October, in the County Jail, did she not ask you, "Are you sure it was the second landing where you saw Blanche Lamont killed? Is not that landing a little to one side of the gallery?" and did you not reply, "No, you can look directly onto it"; and didn't she then say, "Oh, yes, it was from the second landing where the blood fell onto the cloth covered frame." You then replied, "There wasn't any blood, there wasn't any at all," and that the spots on the picture frame had been analyzed and showed they were only water? Miss Cunningham furthered her rumor story to me in something to that effect, and I argued the point to her that one could not see in from the ceiling in which I was in, or in which I was stationed at that time on the new ceiling; and I also said to her: "You should not come here and try to put any such story into my mouth as you did the sweet-pea story." I also said to her of this story of the sweet-pea girl: "You came here and had her related to me, and you had her my cousin from Scotland; you had her as the young lady who was putting up the money for

this defense." I said, "You printed that or something to that effect, and where did your story land?" I said, "Don't come here any more with any such story or with any such rumor, because I will not affirm or will not deny anything more." That was the end of it.

Charles P. Lenahan: I never had a moustache in my life. That is the ring I took to 405 Dupont street. I had on this overcoat and a similar hat to this. Mr. Oppenheim walked into the store with me; I asked him how much he would loan me on the ring. He said he could buy them by the bushel. I left the store and went towards California street up towards Pine street. Saw illustrations of the ring claimed to have been worn by Blanche Lamont and to have been offered to Oppenheim. I never saw the other ring. The picture of her ring and my ring looked very similar. I had on a blue overcoat and velvet collar attached and wore a black Alpine hat.

Cross-examined: (Puts on coat and hat, the coat a short blue coat not reaching to the knees). This is the overcoat but not the hat that I wore that day. That hat was a soft hat, not large, small.

Dr. George Charles McDonald: Have been a practising physician since 1883. Am a fellow of the College of Surgeons in Edinburgh and Doctor of Medicine of the University of Brussels and a member of the Royal College of Surgeons of England. Have had experience among insane people in the Morningside Asylum of Scotland and have observed the

effect that constant reading concerning a subject of more than ordinary importance, whether it be an event of sport or event of discovery or even an event of crime, has upon the imagination. The nature of imagination particularly in women is so aroused that delusions are created to the extent that the person will believe that certain facts stated to be real are real, while in truth and in fact the subject so stated to be real is entirely a delusion. In many instances impaired circulation caused by heart disease affects the vision as to acuteness, by means of alteration of the circulation of the eye and has an effect upon the retina. In old age the lens become more flattened and somewhat opaque and the retina undergoes some changes also. It is an absolute rule in the normal eye—that a person requires glasses at about the age of 40 to 45 and that such glasses have to be increased every five years in strength. As the lens flattens presbyopia takes place so the glasses are not strong enough. The first effects of inhaling gas is to become giddy and nauseated, and have a throbbing sensation about the head. After feeling giddiness, his extremities would get cold and clammy, and then, when he got the fresh air, it would pass off.

IN REBUTTAL.

John A. Davis, P. D. Code, A. Spaulding, A. B. Vogel, C. G. Noble and C. W. Taber, trustees of

the Emmanuel Baptist Church, said they had not stated to defendant that the electric appar-

atus of the church was out of order, nor requested him to repair or arrange the apparatus.

C. W. Dodge: Am a student in the Cooper Medical College. Saw Durrant at the ferry on 12th April; I was in company with Mr. Dukes at 3:30 in the afternoon, somewhere along there. He stated he was waiting for members of the Signal Corps; have no recollection of his mentioning the name of Blanche Lamont. Do not remember the reply, but remember one of us saying, "Well Durrant have you found the girl that is missing yet or the girl that you ran away with?"

C. A. Dukes (recalled): Went to the ferry in company with Mr. Dodge on 12th April between 3 and 4. Saw there defendant and he stated he was waiting for some members of the Signal Corps and if they did not come very soon he would not wait any longer. One of us in saluting Mr. Durrant asked him something in regard to Miss Lamont—what he had done with her or whether he was waiting for her. It was something to the effect, "Durrant, have you found that

girl that you ran away with?"

A. A. Hobe: On 12th April I saw defendant at 5:05 o'clock standing at the ferry talking to a lady. I can not describe her general appearance.

Edward F. Glaser (recalled): Attended Dr. Cheney's lecture on 3rd April on infant feeding and sterilization of milk; I took notes. On 10th April I went to study the notes over preparatory to Dr. Cheney's quiz that would take place that afternoon and Mr. Durrant came with me to Professor Hirshfelder's clinic-room and there I read over my notes; he took notes of my reading.

Cross-examined: I don't think it unusual for students to read their notes to each other. He had a book that he took notes in, in his hand.

Thomas Price: Am an analytical and general chemist. Have seen that shoe before.

Mr. Barnes: Look at the sole of the shoe and tell me, if, at the request of the officials, you made an analysis of any spot or spots.

Mr. Dickinson: We object to the question.

THE COURT: Do I understand you claim that this shoe had spots of blood upon the sole of it? Was not that the object of the offering of the shoe by the defense? (The testimony of Sergeant Reynolds is referred to, a witness called for the defense, in which he testifies as to the finding of the shoe in the study of Dr. Gibson, and as to the spot upon the bottom of the shoe, which spot was marked for identification, and testified to by the witness as being suspected of being a blood spot. Similar testimony was given by Sergeant Burke.) If this shoe was not introduced by the defense for the purpose of arguing that spot on it was a blood stain, for what purpose was it offered and admitted? If I understand the defense do not claim they were blood stains, then there is no use to go through this.

Mr. Dickinson. I can not argue that from the testimony.

THE COURT. I will overrule the objection.

Mr. Price: My examination proved that the spots were not due to blood, but to some greasy or oily matter. I have made an analysis of the illuminating gas of the San Francisco Gas Company. The gas here, called water gas, is manufactured by passing steam over heated anthracite, resulting in the decomposition of the steam producing hydrogen and carbonic oxide. Another is prepared of a high illuminating power, from carbons rich in illuminating gas, as well as from petroleum oil. The two are mixed together in order that it may have a sufficient illuminating power according to the demand, which is 17 candle-power. Carbonic oxide is a non-illuminating gas and very highly poisonous; it is inflammable.

Mr. Barnes: Suppose that an individual of ordinary normal health and strength, young and vigorous, goes to a sun burner or gas illuminator, composed of a circle of pipe some 18 inches in diameter; that from this pipe there emanate 24 several and different gas burners; that the subject has turned on the gas in all those burners at half force; that the sun burner is covered by a reflector which extends on all sides of the sun burner for the purpose of reflecting the light downward and carrying off through a ventilator the bad air and escaping gas. He removes three of the plates of this reflector, that he lies down upon the floor, places his head inside the ventilator, and works there three, four or five minutes, arranging and fixing these 24 different burners; that all this time his breathing apparatus is over

and above the stream of gas coming out. A. Based upon the composition of gas through the pipes of the San Francisco Company, I would say that no one could breath such atmosphere for two minutes without being absolutely overcome and rendered perfectly helpless. Carbonic oxide and carbonic mon-oxide are synonymous terms, the latter being the more modern. Bromo seltzer contains potassium bromide, the basis or active principle and caffenin. The toxic effect of bromide of potassium is a depressing effect upon life.

Charles Morrison: Am a newspaper reporter. In the City Prison on 14th April defendant told me that on the afternoon of April 3 he arrived at Emmanuel Church for the purpose of attending to his electrical work between 4 and 4:30.

J. P. Cooper: On the 14th and 15th April, 1895, was a reporter connected with the *Call*. Was present during the entire time of an interview between detective Gibson and Mr. Marshall in detective room, City Hall. No such remark was made by Mr. Gibson that there were traces of a No. 8 or 9 shoe on the upper platform of the belfry of the Emmanuel Baptist Church.

J. S. Dunnigan: Dr. Gilbert F. Graham and I visited defendant in his cell on 20th April. There are open bars along the front. He stood and conversed on one side and we on the other. Durrant asked me to retire; Dr. Graham did not. I did so and waited for Dr. Graham three-quarters of an hour. They were in my view during that time,

were both close to the bars and talking earnestly.

G. G. Graham: Was a student at Cooper Medical College between June, 1894, and the present time. Was present at Dr. Cheney's lecture on the afternoon of April 3 and took notes. Went shortly after defendant's arrest, accompanied by Mr. Dunnigan to the city prison. This is my note book and notes of lectures. It was in my possession when I visited defendant. Mr. Durrant asked Mr. Dunnigan if he would step aside and said he wished to speak to me in private. He stepped aside, out of ear shot, and left me alone with defendant. He asked me if I had any objection to lending him my notes that he might compare them with those he had. He admitted he had no notes of that lecture and he said if he could get the notes or my notes he could prove his alibi. He told me I could take them out to his house, get his book and put them in his book and the book could be brought down to him. He said I could learn the notes and come down to the prison and tell them to him. I have never seen him since except in the court room. I did not go to visit him again nor furnish him my notes or a copy of them.

Cross-examined: Do not remember having asked defendant on that occasion whether he had the notes of Dr. Cheney's lecture or not. I remarked, "You are very foolish to make such a request for it will get you into trouble."

Carrie Cunningham (recalled): Am a reporter on the *Examiner*. Have visited defendant almost

every day up to the 5th October. I went for my paper. In the course of an interview the first of October he said: "When I was fixing the sun burners I heard a noise and followed it to the belfry and looked through the open space and I saw her on the second landing. She was murdered on the second landing." There was an understanding I was not to publish in the paper anything without his consent, and I said, "That is a great newspaper story, it is a corker," and he said, "Well, you won't publish it, will you?" and I said "Not without your consent," and he said "promise me" and I said "I promise you I will not publish that story in the paper," and I have kept my word, and he said to me, "Put up your hands," and I raised my hand like this and said "Don't you trust me?" He did not get out his Bible; I did not kiss the Bible. I did not know he had a Bible, the only books he ever showed me were the books the sweet-pea girl had sent him. It has never been published. On the 5th October I said to defendant, "Are you sure it was the second landing where you saw Blanche Lamont killed? Is not that a landing a little to one side of the gallery?" He said, "No, you can look directly into it." I said, "Oh yes, it was from the second landing where the blood fell into the cloth-covered picture frame." He said, "There wasn't blood, not a bit, there wasn't any blood at all."

Cross-examined: I keep notes of my visits to the County Jail so I am able to tell exactly. I went there and I saw him almost every day. I never used any-

thing for publication without his permission. I sent him flowers once but he did not get them; the jailer kept them. He told me that prisoners were not allowed to have flowers. These matters that I have testified to were told to me by defendant on my oath that I would not publish them; I have kept that oath to the letter. I asked the jailer if Durrant had to eat the prison fare and he said no, that things were sent in to him, and I says, I suppose it is quite a good idea to have something nice to eat, all men like to have nice things to eat. I have frequently given him chewing gum. I sent the flowers the first week I knew him. He was telling me how dreary the cell was and he said he was fond of flowers and that he had a garden, and I sent him some roses but he did not get them. I had a great many conversations with him about the sweet-pea girl. I did not write that story. Mr. Cassell wrote it; it was published in the *Chronicle*.

Dr. William Henry Mays: Am a physician and surgeon, a graduate of the medical department of the State University; have been practising for 21 years, my practise consisting largely of mental diseases (stating the question before given to Dr. McDonald *ante* p. 675). I should be of the opinion that such a subject would be in a condition of insensibility.

Mr. Peixotto: What is the physical effect on the human body of the breathing of illuminating gas which is composed of, say, 15 per cent of carbonic oxide? A. The first effects would be dizziness and rapid insensibility. If more

than a small quantity is inhaled the insensibility becomes very profound, there is a difficulty of breathing sets in, the whole surface of the body and face becomes flushed and reddened, then paralysis occurs and collapse and coma and death. There would be a collapse and loss—complete loss—of muscular strength and the approach of insensibility and reddening of the surface. The mere bringing of them into the fresh air will not prove curative because a certain amount of very virulent poison has been taken into the blood.

Dr. Julius Rosenstirn: Am a physician, a graduate of the University of Wurtemberg and Berlin. I know the effects of inhalation of illuminating gas upon the human body.

Mr. Peixotto asked the same hypothetical question about the effect of illuminating gas.

Dr. Rosenstirn: After breathing from three to four or five minutes a combination of gases where carbon oxide is from 10 to 15 per cent, if I understand it correctly, the probability is that the person would be unconscious; certainly intoxicated to a marked degree with the inhalation of the gas. The face would look markedly flushed; the visible mucous membrane of the eyes, the conjunctive and the mucous membrane of the lips would look very red; later on the party would see things floating before his eyes, he would become dizzy and that would represent the stage from consciousness to unconsciousness. Then he would become unconscious and remain so if the intoxication continued.

THE SPEECHES TO THE JURY.

MR. PEIXOTTO FOR THE PEOPLE.

Mr. Peixotto. Gentlemen, the facts and circumstances are now before you. The patient days of listening, waiting and expectation are over. It is now the counsels' privilege to address you, not to present their assertions or opinions, but, adhering to the testimony and evidence and to that alone, to deduce therefrom such conclusions and convictions as will appeal to and be adopted by you and produce in your minds that moral certainty by which you, as jurors, alone may act. We as counsel for the State recognize that this is a great and important case, that we have a divided duty—to the State and to this defendant. The State never does and never will ask the conviction of an innocent man. Ours is not a case that must be won at all hazards, regardless of law and consequences. No officer of the law mindful of his duty, conscious of his oath and regardful of his position, can for a moment forget this high responsibility. If this defendant is not guilty we as the State's representatives demand the right to know it. If the defendant is guilty we as representatives of this State demand the right to know it and to see that he is punished as his awful crime deserves. You alone under our law and constitution can determine and solve this great problem.

We ask for a calm and deliberate judgment. Whatever may be the public opinion is not determinative here, for the waves of public opinion may beat and rage and roar and roll, but when they strike the walls of our Court of Justice, there they must stop and be dispelled. In the calmness and dignity that we have witnessed throughout this proceeding, no matter how hideous the crime, nor bad the individual who commits it, he is entitled to that fair and impartial and deliberate trial guaranteed to all. We, as officers of the law, have endeavored to place before you the best and most complete evidence, to suppress nothing and to offer nothing that had not the stamp of truth upon it. You cannot be unmindful of the fact of the importance of this trial. From the day it was first heralded to the world, this case has struck terror and horror to the minds of all the reading public, for it strikes at the very foundation of our lives. It means doubt as to whether when you bid your daughter, your sister, your wife, one near and dear to you, a farewell in the morning, and she in her innocence goes forth to her daily avocation, is she to return to you safe and well and undefiled, or is she to be lured by perfidy, cajolery, cunning and persuasion of some fiend in man's habiliments to some lone spot and there robbed of virtue and honor, murdered, defiled and her body desecrated. It means are even your houses of God safe or are they to be converted into charnal houses, receptacles for the victims of the lustful murderer. In this case, if we are entitled to a verdict, there is but one, one verdict that the prosecution asks and that is

guilty of murder in the first degree with the death penalty. You know by this time that the defendant is charged with the crime of murder for having killed Blanche Lamont on or about April 3, 1895. This fact must be established to your satisfaction beyond all reasonable doubt and to a moral certainty. This reasonable doubt does not mean a vague, imaginary or possible doubt, for everything that is the work of a human being, that must be proved by the testimony of mankind, is accompanied with some vague or possible doubt. We are now ready to answer these questions. "Where was she murdered?"; in the belfry of the Emmanuel Baptist Church. "When?"; on the afternoon of the 3rd of April, 1895, between the hours of 4:20 and 5. "By whom?" by Theodore Durrant. "What was the motive?" unbridled passion, that same motive that has ruled and governed the world, made nations totter and decay, brought men from the highest pinnacles in life down to brutish beasts; that same motive that has filled our histories with black pages; that gave to the Roman Empire such characters as Nero, Tiberius and Caracalla—whose delight and pleasure it was to see men, women and children slaughtered before their eyes to satisfy their beastly desires; that same motive which inspired Gilles de Rays, who was executed in 1440 after confessing to the murder of some eight hundred children in eight years to satisfy his perverted nature; that same motive that actuated Catherine de Medici to have women flayed before her eyes to satisfy her perverted passion; that same motive that brought out in the revolutionary period the monstrous baseness of Marquis de Sade, from which the term sadism is derived, a term meaning passion and lustful murder coupled with villainies; that same motive that prompted and made into a monster Jack the Ripper, the Whitechapel murderer, who went about week after week and month after month in that quarter of London known as Whitechapel and there killed fallen women by strangling them and left them murdered and dismembered; that same motive that was the foundation of that wonderful work in fiction of the late Robert Louis Stevenson—the portrayal of Dr. Jekyll and Mr. Hyde; that same motive that made Mr. Hyde satisfy his inhuman feelings, his perverted passion, his uncontrollable desires by killing simply for the pleasure of killing and then satisfying his lustful desires after the killing had taken place; the motive, insatiable passion, the fire that consumes, the abyss that swallows all honor, fortune, well being, everything.

Blanche Lamont was a girl of about twenty, born in Montana, reared in the country, coming here a year or two years ago to her aunt, Mrs. Noble. You have seen her aunt; you can judge from her of the class and kind of a home that this girl had. Take the description the defendant gave to this girl. He said she was so good, so pure, so innocent, that she thought all others were like her, and that whomever she had confidence in could lead her whither he would.

The other character in this awful tragedy, is a young man of 24,

a handy man about the church, a medical student—one who is just on the first step of that profession which takes nerve, the kind of nerve that leads up to a crime of this character—a profession in which so many have stopped in the first year of their studies, because they did not have the nerve and stamina to go through the ordeal of handling the dead bodies and cutting them up and dissecting them. You have seen this man in Court, you have observed him on the stand, you have seen his coolness and his calmness and his cunning. That character and the medical student handling dead bodies I wish to keep before your eyes, for we shall need that later on. The character of Miss Lamont trusting and confiding in those in whom she had faith—I wish you to keep that in your minds for we shall need that later on. The defendant has proved a good character. I admit that good character in a criminal defense is one of the strongest safeguards against conviction. We know as prosecuting officers that in the ordinary cases of theft, embezzlement or forgery, it is one of the hardest things to contend against before a jury. Place a man on trial and show me that he belongs to the criminal class or is a poor wretch, an outcast, and the jury will listen to the evidence, no matter how weak, retire to the jury room, and in five minutes come back with a verdict of guilty as charged. But let one come to the bar well dressed, with good surroundings, a few well-appearing people in his retinue, and prove a good character, and though the prosecution produce evidence most convincing, the jury will return a verdict of not guilty with an explanation that they had a reasonable doubt and a secret feeling that they had better give the man another chance. I do not argue against this doctrine. It is a man's safeguard and protection for which we forbear so much for the sake of reputation. The defendant has proved a good character, yet strangely I urge this as a strong circumstance against him in this particular case, and why?

Only with a man with an ostensibly good character would Blanche Lamont have gone to a lonely spot. If Theodore Durrant had been a man of bad character, if Blanche Lamont had for one moment suspected that he was not what the world believed him to be, she never, never in her brief, short life, would have gone one step out of the sight and hearing of other human beings. That is why I say to you that in this case the defendant's good character helps to prove him, as we will show you, the murderer of this girl and does not, as under the general rule, redound to his credit. Blanche Lamont and Theodore Durrant were acquainted. He was probably what might be termed her best friend. He escorted her to church, escorted her home, called on her, and, in her uneventful life, this young man with his education, that swift, smooth tongue which you have heard, was probably a light in the monotony of her little world. When Theodore Durrant took Blanche Lamont for a ride to the Golden Gate Park, that to her was an event. Blanche Lamont was not like some of our women who spend their lives in the hypocrisy of the social world. Small matters were much to her.

It is admitted that on the 3rd of April Blanche Lamont started as usual for the High School. The defendant states he started for his Medical College. However, his conduct and doings were unusual. Durrant had never before met Blanche Lamont, never before gone to college by the route over the Mission street cars, never before gone with her to school in the morning, but upon this fatal day all three of those things for the first time happened. He had reached that state in his relations with Miss Lamont when he was getting into closer intimacy. His counsel admit that he met Miss Lamont in the morning and went on the cars to school. We proved this fact without their admission by the conductor Schellmount and student Schlageter. Shellmount, the conductor, states this young girl two or three times a week in going to school rode upon his car. This statement by the conductor is not strange—there is not one of you gentlemen riding daily from his house to his business who does not frequently ride with the same conductor. This conductor whether he speaks to you or not knows you. If you can prove the doings of the morning, which defendant admits, why can't you prove the doings of the afternoon which he denies? Because for him to admit the doings of the afternoon would be to admit his guilt. The testimony shows that Durrant was not at the lecture of Dr. Hanson on the afternoon of the 3rd of April. He was not at the lecture on the afternoon of the 10th of April. Where was he? Durrant states that he was in the library talking with Student Diggins not about some lecture, but prescribing for the catarrh. Diggins does not corroborate the defendant in this regard, but the testimony of the State does prove in plain and positive terms where Durrant was on this fatal afternoon. First Mrs. Vogel—you saw her, you are to judge of her character, her mentality, and whether or not she is laboring under a delusion. She appears as a plain lady living in her humble home on Powell street with her husband whom you also saw, an industrious, hard-working man. She told you that on this day she had in her house some money, not her own money, but money that belonged to a friend. This fact increased her sense of uneasiness. You know that any conscientious persons having something entrusted to them, are more mindful of others' property than of their own. Mrs. Vogel further explains that there had been a burglary in the neighborhood two or three evenings previous—you know how that fact always sets a neighborhood agog. So it was, Mrs. Vogel on looking out of the window, saw this man. Now she does not say that that fact attracted her, a man simply walking up and down; on the contrary she says that it did not, but she looked again and the same man was there, and shortly she looked again and the same man was still there and he was pacing up and down, walking to and fro, looking up at the buildings. As we now know, he was there waiting for his victim as would the carrion vulture, that flies backwards and forwards waiting for its prey. Durrant was there about two o'clock. He was not where he should have been—at Dr. Hanson's

lecture. Mrs. Vogel watched him, and, seeing him there so long, his conduct aroused in her mind a suspicion that he might be a thief, and, in order that she might not be mistaken, she observed him through a pair of opera glasses. When she again saw this face in the paper, she recognized, and now identifies him as the self-same man. Mrs. Vogel's testimony does not stand alone and uncorroborated. In due time the school let out, the young girls came from their classes into the open air. Mrs. Vogel saw two girls come out of the main entrance and start down the stairway nearest to Clay street. Miss Edwards testifies that she came out of the school with Blanche Lamont. Miss Edwards knew Blanche Lamont and you cannot be mislead at this point, so let us follow closely. Mrs. Vogel saw this man she had been observing run up to this couple, this man, Durrant, who should have been at Dr. Hanson's lecture, but was not there. Miss Edwards observed the man and saw Miss Lamont and him get upon the outside of the car and Miss Edwards got in the car, and thus, by these witnesses, we have proved that Theodore Durrant stepped upon the car with Blanche Lamont after she had left the school. Mrs. Vogel saw that car start on its trip southward. Miss Blanche Lamont started with Theodore Durrant upon her last earthly journey. This defendant started on the road to the murderer's cell and ultimately the gallows. The car sped on. It reached California street and there, as if by act of providence, it halted. "Stop" was imprinted in the iron bar in the track. Even that dumb thing has testified against this foul crime. "Stop", mute and motionless there in the street cries out against this murder. The car did stop. On the sidewalk at this point were the witnesses, Mrs. Dorgan and Miss Lanigan, and Minnie Bell Edwards was inside of the car. One of the two girls on the sidewalk said, "There is Blanche Lamont." They observed this young man and saw this same young man again at the police station. They saw him again in court, pointed him out to you, identified him. That is testimony to a fact, uncontradicted, corroborated and unimpeached and under your oath you cannot lay it aside.

The car continued on down the hill onto the turn-table. Miss Edwards was still in the car. As she alighted, she glanced up and saw these two persons, Blanche Lamont and Theodore Durrant, were still on the dummy of the car. She went on her way; Blanche Lamont and Theodore Durrant went upon theirs. Thus has Blanche Lamont been taken out of school, put on the car, and conveyed down to Powell and Market street. She now gets upon the Valencia-street car. We have seen these young girls just blossoming into womanhood and appearing in their freshness and maidenhood to give their testimony. Fit is it now that the chain in this remarkable case be completed from the lips of the latter end of life. Age now steps in. In connection with Mrs. Crossett's story I am reminded of that beautiful parable of life which has been portrayed to us by one of the masters of the English language, Joseph Addison, entitled "The Vision of Mirzah." Mirzah goes forth one morn-

ing musing, to the brow of a hill, and there midst his meditations, a feeling comes over him that man is but a shadow and life is but a dream. In the midst of his meditations a Genius appears before him and says, "Look out into the vistas of beyond, and tell me what you see;" and Mirzah, all gaze, looks. "I see," said he, "a rich valley with a prodigious tide of water flowing through it." The Genius replied, "The valley is the valley of misery, and the tide of water is the tide of eternity; look further and tell me what else you see." "I see," said Mirzah, "upon one side, a great cloud of smoke, and upon the other another cloud of smoke and between the two a great bridge spanning this river, and this bridge is constructed of three score and ten arches with a number of broken arches beyond. The bridge is crowded with people running hither and thither. At the beginning of the bridge the crowd is dense and thick, so thick that they are pushing each other off and people are falling through pitfalls. As they advance, the crowd becomes less and in the middle they are all seemingly engaged at something whilst, rushing here and there, hither and thither, appears some active individual with a knife or scythe cutting down and slaying his brethren and then pushing them into the surging tide. There are trap-doors and pitfalls in this bridge and as some man is running blindly to catch at something, all of a sudden he falls through and is carried on and is lost in the seething whirlpool. Towards the end of the bridge, the crowd becomes thinner until the broken arches are reached, and at the end there are but few individuals who have an ambling gait stepping carefully and taking precious care of themselves, jumping from one place to the other. They no longer jostle, no longer look blindly, they no longer grasp at the vapid somethings. They are now intent upon picking out their own footsteps, on preserving their own equilibrium. About the middle of this bridge there are myriads of birds, some small wing birds and others appearing like vultures seeking carrion. These fly about particular individuals." After Mirzah had observed this wondrous sight, the Genius said, "That which you see is the bridge of life. In the early part of life we start out with a mad rush regardless of others' feelings and many are cut off. In this rush we are pestered like this people by these birds. The birds are avarice, envy, hate, anger, love and other virtues and vices of humanity. The trap-doors are the fate of those who fall within. Those who are running about are the evil doers, the sinners, whose time is spent in injuring their fellow-men. The three score and ten arches represent the years allotted to men. You observe some few have reached beyond. These are no longer jostling or pushing their fellow-men. They are assiduously preserving themselves. Their work is there; their lives are almost run and they are satisfied to go along without interfering or being interfered with by any."

Mrs. Crossett has reached the end of life's bridge. She is now on the broken arches, has lived a noble and faithful life, has reared a large and honored family. She has children, grandchildren, and

I believe great grand-children. Do you think when life's fitful fever is about over, when this lady has reached that part of her earthly career when there is nothing but the hereafter to look to, she is going to sully her conscience, burden her being with the fact that her word, her testimony, her oath, unjustly assisted to hang a human being? What counsel, however brilliant or learned though he may be, can make you believe but that Mrs. Crossett has spoken the truth. When she said she saw "Theo" there was a tremble in her voice for it was hard for her to say she saw this young man whom she had known, who had been a visitor to members of her family, who had been a friend and companion of her son. Thus in her last days she is taken from a sick-bed, brought into a court of justice, put through the ordeal of going upon the stand in a crowded Court Room and submitting to the cross-examination that justice may prevail in our midst. When she told you, I felt that you believed it was a fact that she did see Durrant upon the car, Theodore Durrant with a girl whom Mrs. Crossett describes as arrayed in garments such as Blanche Lamont wore on that day; that this couple got off at Twenty-first street and walked in the direction of her home and of Emmanuel Baptist Church.

Blanche Lamont lived on 21st street and Theodore Durrant had gone to that school to take her home. We can, in this walk toward home, imagine we hear this glib tongued youth, this man with the ready answer, suggesting to this innocent girl, "Let us go to the church for a moment," this man of good character, this companion of this girl, one so good, so innocent, so pure, that she could be led anywhere by those in whom she had confidence. Thus they went down 21st street and continued on to Bartlett, and there they are seen by Martin Quinlan.

Mrs. Leake was at her window looking for her daughter who was to be home that afternoon and you know that when a mother is waiting for her child she is intently looking. This daughter is an hour late and yet did not come. Whilst thus engaged, Mrs. Leake saw a couple coming along. The man was Durrant, she states, and the girl was either Lucile Turner or Blanche Lamont. Mrs. Leake could not see the girl's face because the girl was looking toward the man and the man was facing her. Mrs. Leake knew Durrant, worshipped at the same altar with him, was a member of the same congregation and had met and seen him many times on previous occasions. If Mrs. Leake were prevaricating, if she were not honest, could she not state "I saw Durrant and Blanche Lamont enter the church at 4:20"? But she is truthful and tells you only what she really did see. And so it is that she said it was Durrant and the other was Lucile Turner or Blanche Lamont. It was not Lucile Turner for Lucile Turner fortunately for herself did not, after a certain time, associate any more with Durrant. Blanche Lamont had not learned the character of her companion, and so, unsuspecting, she entered the little gate of the church which unbeknown to her was then the portals of heaven. When she disappeared from

the sight of Mrs. Leake, she disappeared forever from the gaze of mankind until her corpse was found as you have heard it described. What happened within that church must forever remain a blank, the details concealed alone in the breast of Theodore Durrant. That is why we asked you if you would convict on circumstantial evidence and you severally answered "Yes." It was a deed which the eye of man could not see.

Into the belfry went Blanche Lamont and Thoeodore Durrant. There they were alone. Passion predominating in this perverted man asserted itself; a weak maiden fighting for her virtue and her honor, a pervert, fiend and devil fighting to satiate an insatiable and overruling passion. His strong arms grasped her, his fingers stiffened on her throat, her breath stopped, her struggles ceased, and Theodore Durrant was a murderer.

No sooner has an act been executed than the guilty one starts to conceal. The clothes are taken off and tucked away; the body is stretched out and positioned by the hand of one who had done the like before. There in that fantastic place on a floor erected high above the ground with her arms crossed on her breast, there alone, unclothed, unhonored, unpraised, unwept, uncoffined and unknelled, with no dirge but the wistful wailing of the wind as it whistled in and out of crevice and cranny, the murderer left her hoping that time might wither and age decay and thus identity might be lost to man forever. Oh, what a mistake was that. Did the murderer for one moment think there was a hole deep enough or a tower high enough in this little world of ours to conceal such a crime, the mortal remains of that pure girl? Like the ostrich, sticking its head into the sand and thinking it has thus hidden itself from sight, so Durrant hid in crevice and corner the tell-tale garments, all of the means of identification of this poor girl, hoping that in time nothing but the decayed body, the gaping skeleton might be discovered and thought to be some poor wanderer who had thus mysteriously died. There were her gloves, her clothes, her school-books, everything as Mrs. Vogel saw them when the girl came out of the school, as Miss Edwards saw them when she went down-stairs with Blanche Lamont, as Miss Lannigan and Mrs. Dorgan saw them when the girl was on the car, as Mrs. Crossett saw them on the unfortunate young woman, as Mr. Quinlan saw them, as Mrs. Leake saw them. All her apparel, everything—even the underclothes that her sister saw her put on in the morning were discovered in the church and have been brought here and exhibited to you and are now in court, each severally crying out, "Guilty, guilty, 'twas you, and you alone, who did it." It is true, no human eyes saw, no human ears heard, save those of the dying, strangled girl and this man who has buried himself in his own falsehoods in his endeavor to save himself from the penalty of his awful crime. That the murder was done in the belfry, that Durrant planned to and did go back and finish his work by destroying evidences of his guilt is most apparent. The defense makes the point that if Durrant

had been up in the belfry, he could have walked down to the outer door of the church into the street and thus avoided meeting anybody in the church and thus would have been eliminated from the case the testimony of George King. This at first glance seems plausible but on closer observation it is readily explained. When Durrant left the scene of the murder, he was no longer a reasonable man; he was a murderer. To him every nook and corner was an eye. A murderer's imagination is looking always for some one who is spying on him and will discover his dominating secret. A murderer seeks not the light of day, but the darkness of night, yea, an Egyptian darkness is not sufficient for his own concealment. Suppose Durrant had come out of the belfry door, had walked into the light, had run into Janitor Sademan or someone else, had walked into the street in his pale condition and met somebody there who would say, "Theo, what have you done, how come you here?" That person would have traveled right upstairs to see. The murderer's mind takes no such chances. He wants, as I said, darkness. So Durrant went down by the way of the murderer, down by the way of darkness. You gentlemen have traversed that way when you visited the church and you know how you have to go groping about through little openings over that false ceiling, in and out until you reach the darkness of the back-stairs which lead into the room where King was. The defense makes another point which I am ready to answer. They say, "How would a man with his hands dripping with blood walk in upon George King seated playing the piano?" In answering this I am not going to call for any expert testimony, I am going to ask for your own individual experiences. Is there any of our involuntary senses we have more control of than the hearing? You can go to the theater and opera and direct your sense of hearing upon one particular instrument, upon one particular voice. You know that you can stay in a room while there is a conversation going on around you and never hear a word. You know how, in fits of absent-mindedness, whole conversations pass in your presence without a word being heard. Durrant was coming down from the belfry with something on his mind, coming down for the first time into the light of day as a murderer. Do you imagine for a moment that there was anything else passing in his head other than his deed, that murder? Scrutinizing the testimony of George King, his friend and companion, an unwilling witness for the prosecution, you will see that this fact is fully borne out. King testified defendant came through the sliding doors in the rear as if he had come from that part over near the kitchen and stood there for a moment and looked at him and then passed through. He stood pale and disheveled, his hair matted, the pallor of nervous shock and nervous exertion on his face. Thus you have it from George King that he stood, and that moment's pause was his indication of surprise at meeting some one. The defendant, in his testimony, describing this moment, stated, "I came to the door, said 'Hello, George, how are you?' Playing the piano, eh?"

I heard you when I was up between the ceilings and saw you before I came through the doors—knew all about it.” But the defendant in his testimony let one line slip which is an index to much. When George King said to him, “Why do you look so pale?” he testified he replied, “You also would be pale if you had gone through what I have gone through.” And so you have it both from King and the defendant’s own admission that he appeared in this door-way, pale, aghast, sick, nauseated, and well might he have been after going through the acts that completed this awful crime.

Durrant had changed from the position of Superintendent of the Sunday-school, medical student, handy man about the church and pleasant man among the ladies to the slayer, the murderer of Blanche Lamont. Shakespeare put it:

“One sin, I know, another doth provoke;
Murder’s as near to lust as flame to smoke.”

Our own poet, Oliver Wendell Holmes, has truthfully written, “Sin has many tools, but a lie is the handle that fits them all.”

When this defendant had committed the greatest sin in the whole category, when he had transgressed the first law of God and the highest law of man; when he had imbued himself with the greatest of all sins; from that time, I contend, his entire life, his every act with reference to the Emmanuel Baptist Church and with reference to Blanche Lamont and everything connected with the church people and matters, was a living lie that today stands exposed in its entirety. When he met George King and stood pale, aghast, appalled, disheveled, and King said to him, “What is the matter with you?” and Durrant replied, “I have been up-stairs fixing the gas,” this first explanation we have proved is false. (The janitor, the directors, plumbers, the doctors and the chemists, all show that the repair of the gas fixtures, as stated by defendant, was unnecessary, had never been reported and was improbable.) He was not there to fix the gas. The gas that that man had been tampering with was the life breath of Blanche Lamont and that alone. If he had been to the fixtures, he would have had tools with him when he appeared before King. He would have been as any person would have been, dirty and soiled, and, as the doctors say, red. But he was pale and haggard and disheveled. That is his first falsehood. His first explanation is disproven by science, by medicine, by the very repetition of the story itself. That night he goes home. His mother testifies that his appetite was not good. He went to church. Mrs. Noble came to church. At that time nobody in the congregation knew Blanche Lamont was missing. Mrs. Noble was worried and, as she explained, went to church thinking Blanche might appear there. Who above all people is the first to mention the name of the missing girl? Somebody’s conscience was troubling him in that church. Somebody had a gnawing at his inner self. Somebody was there who was not there for the purposes of prayer or devotion but for the purpose of concealment. That person was Durrant. He moved

near to Mrs. Noble, and said, "How is Blanche? I have got a book I am going to bring her." He was beginning to build the baseless fabrication of the defense that has been presented to you. Time went on. The girl was reported missing. Durrant joined actively in the search. He was suggestions, offered his services and the services of his friends, depreciated the detectives that were out, said that they were not doing their duty. And yet when the search was at its ripest, when all had given up hope of finding this missing girl, uncertain where to look for her, it was left to this defendant, Theodore Durrant, above all others, to find, as he tells you, a clew to Blanche Lamont and never reported it until his cross-examination and he was pinned and hemmed in by the accusation and proof of murder. He was forced to take refuge in an absurd but guilty explanation. Theodore Durrant, as we contend, had a very different errand at the foot of Market street on the 12th of April than the evidence of himself will disclose. He was there watching the boats coming in, as he states, for Blanche Lamont, who was going out. The prosecution is stopped there in its proof, but we have the fact that Durrant was there waiting and watching for some one. Again the fates were against him for Sademan, the janitor, was there waiting and watching for some one and this circumstance, to my mind, coming as it does from the defendant's own lips, is one of the strongest facts proving his guilt. Sademan, as you remember, was the janitor of the church. Sademan was connected in many ways with the congregation and would be likely to report what he had heard from anybody to members of the church. Sademan knew of Blanche Lamont's disappearance. Sademan was interested in the search. When this defendant saw Sademan, Blanche Lamont was recalled to the defendant's mind. The human mind associates things, persons and places. If one is shown a hat, he thinks of the head to put it on. If one is shown a shoe, he thinks of the foot upon which it is worn. If you are shown a saddle, it carries with it the suggestion of a horse. If you see a certain individual you think of the person that individual is accustomed to travel with. So, when this defendant saw Sademan at the ferry, Blanche Lamont came prominently into his mind. Here another opportunity presented for Durrant to dispel the suspicion that was slowly growing, connecting him with Blanche Lamont. Everything seemed to be connecting Blanche Lamont with Durrant. The boys were chaffing him, the detectives were beginning to couple his name with hers. Papers were beginning to say he was the last person that she was seen with. It was time for him to do something for himself and so when he met Sademan, Durrant dropped that remark unfortunate for himself, "Oh, I am looking for Blanche Lamont. I have a clew to her. She is going to Oakland or she is going to leave San Francisco this afternoon." On cross-examination before you came the query, "Where did you get that clew? Where did that come from?" If that was so, it was a very important fact. Up to that time, the history of this case and the testimony show

nothing affirmative as to the whereabouts or existence of Blanche Lamont. If Durrant received that clew, it was a very important matter to act upon. It is obviously a very pertinent matter matter to inquire into. Any one who has experience in the trial of criminal cases knows that the explanation of so many crimes is always the absent stranger. Nine-tenths of the burglars and larcenists tried before our criminal courts, when the possession of stolen goods is urged against them, state that they received these goods from some mysterious stranger for whom they have made diligent search, and if they could only find that stranger, it would prove their innocence. If Durrant could find the man who gave him the clew to Blanche Lamont, it would go a great ways toward proving his innocence. If he could explain by any acceptable story about this stranger it would go a great ways towards clearing him of this charge. He cannot, and this mythical story stands as a bare-faced falsehood. Who was it? "A man came up and touched me on the shoulder on Post street," he tells you, "and said, 'Go to the ferry, watch, and you will see Blanche Lamont.'" He heard it; his heart throbbed with joy, and he went to—lunch. After his lunch, he proceeded to the ferry. He never told this important fact to a living soul. If what he states were true, supposing for a moment that it was so, would he not have followed that man, clung to him, asked him question after question and got some details? That night when he met his friends at the Christian Endeavor Society meeting, so many of those who were still searching, wondering, watching and waiting for this girl, would he not have said, "A strange thing happened today. A stranger met me on the street and told me about Blanche Lamont?" But he never said a word. No information passed his lips until, brought face to face with his fabrication, he seeks to extricate himself from his false position, by a lie as transparent as the myth that touched him on the shoulder. He did receive a touch on the shoulder, but that was not at Post street. It was constant, it was everywhere. From the moment he killed that girl there was a touching wherever he went. There was a grim, awful visage following him everywhere. That touching, that grim stranger, was his conscience. Conscience, harder than our enemies, knows more, accuses with more nicety. Conscience which could not be thrown off, which touched him on the shoulder at Post and Grant avenue, touched him on the shoulder in the morning, touched him on the shoulder in the evening, touched him on the shoulder at night. This phantom man was none other than grim visage accusing guilty conscience. To make this falsehood more apparent, your attention is directed to the testimony of the other witnesses who met him at the ferry. He met two other witnesses, Dodge and Dukes, and yet he said nothing to them. These two persons were not in any way connected with Emmanuel Baptist Church, and therefore Blanche Lamont was not, in the association of ideas, connected with them, and yet Mr. Dodge and Mr. Dukes tell you that the first words they said to him jocularly were, "Well, Theodore, have you found the missing girl?" and Durrant

then did not have this mysterious clew suggested to him. The joy of his message must have subsided, for his reply was, "I am waiting for some members of the signal corps."

Later another person sees him at the ferry who stated that five minutes after five he saw Durrant at the turn-table of the Howard street cars with a young lady. That fact is in evidence and is before you to be considered; however, it was not our province to pursue it any further. It may be that he had watched and waited for this young lady as he had watched and waited for Blanche Lamont. I repeat, that this mysterious clew is a falsehood and guilty lie, and the more the defendant has endeavored to explain, the bolder has stood forth his falsehood and his falsehood is his guilt. Which are you to believe, eight or one, especially when that one is actuated by his own interests and buried in his own falsehood. I believe it was Lord Macauley who used this reasoning: If one should place before you a basket containing twenty loaves of bread, and every loaf was alike, and you should be credibly informed that one of the loaves was deadly poison and one taste thereof would deprive the person so partaking of his life, what man with that information would partake or allow any one who was dear to him to partake of one taste of any loaf in that basket? So we have it as a principle and maxim of law, "False in one, false in all." If we have shown that this defendant placed one poisoned loaf in the basket of his testimony, the rest of it is tainted and you cannot partake of it. There is one poisoned loaf in his basket, yea, there are many. Let us count them. Mrs. Vogel contradicts him. The defendant tells you, "I was not at Powell and Clay." Mrs. Vogel says he was. Miss Edwards says he was. Mrs. Dorgan says he was. Miss Lannigan says he was. Defendant tells you, "I was not on the Valencia street car." Mrs. Crossett says he was. Defendant tells you, "I did not go into the church." Martin Quinlan says he did. Mrs. Leake says he did. Defendant tells you, "I had the notes of April 3." Glaser, by inference, said he had not. Graham positively says that he stated that he had not. Science has contradicted him as to the fixing of the gas. Reason contradicts him in his meeting with the phantom man. Is everybody mistaken, untruthful, false, and he alone, the only one interested beyond measure, truthful, right?

Gentlemen, let us take the case from another point of view. Instead of presenting the case leading up to the finding of the cold corpse of the girl in the belfry, let us find her there and see if we can discern what person is accountable. On Saturday, 13th April, for some reason the exact nature of which has not been disclosed to you, a search was instituted in the Emmanuel Baptist Church for something. Crevice and cranny from basement to attic, yea, even to the tower, were gone over and soon a door was found with the knob broken off. It was later ascertained that this knob was concealed under the door itself. The breaking of that knob was sufficient to cause the door to be locked so that it could not be opened with a key. This door was broken through and the officers continuing their search up the stairs, found in the pale light the

form of a human being. Was this man or woman? That being ascertained, the next question was, how did it come there? The body was laid out with the arms crossed upon the breast. There it lay, white as marble. Down these winding stairs the officers bring this white form into the open air and then, as Gibson said, you could see the body redden and start to decay. Even in death did this girl blush when her pale form was exposed to the vulgar gaze of man. One glance told the tale. No scientists's skill was needed to tell the beholder that it was murder. Blanche Lamont could not have committed suicide. She could not have disrobed and concealed her garments all over the church. She could not have laid herself out in the belfry. Therefore, the natural and only inference to any human mind is that it was a death from another's hand. How did she come there? If she was murdered, she could not have been killed outside of the church and carried in there with her clothing and placed in the position found, for, if murdered elsewhere, the body could have been disposed of in many better ways. The answer therefore is, she must have been murdered in the church. Then comes the question: "Who was Blanche Lamont?" Was she a girl who would go about with everybody. "No," comes the answer. Who were her friends? With whom did she go about? George King and Theodore Durrant. Who had access to the church at all times? Dr. Gibson, George King, the janitor, Theodore Durrant. Again, who were the companions of this girl? The evidence is silent as to Sademan. It is certainly silent as to Dr. Gibson. It does say that George King and Durrant were in the habit of accompanying this girl about. Who, without considering the contradictory testimony, was with the girl on the 3rd of April? Theodore Durrant in the morning at least. Who was at the church in the afternoon? Holding strictly to the defendant's admissions, two persons, George King and Theodore Durrant. Where was the body found? In the belfry. Where was George King that afternoon? In the basement. Where had he been previous to that? At his business. What was he doing in the basement? Playing the piano. Who else was in the church that afternoon? Theodore Durrant. Where was Blanche Lamont murdered? In the belfry. Who came from the belfry, George King? No, Theodore Durrant. Upon whom then should suspicion alight, taking it yet as only a suspicion? Is not this suspicion enough to start you on an inquiry? If one were interested in the discovery of the murderer, under such circumstances would you let Theodore Durrant go and arrest anybody else, or would you say, "This is a case to be investigated?" We wish to follow this thing up. Theodore Durrant, we want to know what you were in the belfry for, for science replies that you could not have fixed the gas in the way you described. The trustees say there was no occasion for fixing the gas. The janitor says the gas was in perfect order. Men of science say you were not in the condition that a man would be in who had inhaled gas. The gas explanation is not satisfactory. When Blanche Lamont was murdered, what were her outward con-

ditions? She had on her ordinary clothes, her school clothes, and when last seen had her books. What does that show? She had gone from some place to another place, from school to church. Let us go to the school and see if anybody saw Blanche Lamont leave there. Yes, Miss Edwards saw her leave. Mrs. Dorgan saw her leave. Miss Lannigan saw her leave. What else did these girls see? They saw her meet a man. Who was that man? Durrant. Mrs. Vogel saw Durrant meet Blanche Lamont. We have now a substantial clew. Let us follow it a little further. Mrs. Crossett saw them on the Valencia street car. Mr. Quinlan saw them at Twenty-second and Bartlett street on their way to the church; Mrs. Leake saw them enter the church. Who then went from school to church with Blanche Lamont? Eight witnesses tell you. "Theodore Durrant." He admits he was at the church but explains in his testimony, "I arrived at the church at five minutes of five. I know it because I switched my watch from one pocket to another," but in his previous statements, before he knew that he would be so seriously called upon to make explanation, he stated to several persons that he arrived at the church between 4 and 4:30. He did arrive at the church between 4 and 4:30 with Blanche Lamont. Following the details of the evidence, starting as you will from any point of view, you can reach but one conclusion. From every side, from every source, it leads to the guilt of this defendant or to his falsehood, and his falsehood is his guilt. It is not you who convict this defendant, it is not upon any of you that the responsibility rests, but upon providence. Providence set its sentinels along the line. They have told you the story, traced this defendant step by step from the time he got up in the morning until he went into the church, killed the girl, went home to his bed, and then started on his method of concealment. All of this is before you. This man now stands before you stripped of truth, naked in his guilt. He is as naked, unclothed and bereft, as he left the body of that young girl in Emmanuel Church. There is but one thing left for you to do and that is to render your verdict of guilty. It is ours by right, by law and by justice. We ask it as a matter of duty. We ask it as a matter of right. We ask it in the name of the law, in the name of the People of the State of California. You will be but doing your solemn duty. Do it, as quickly, as surely and as certainly as Durrant with his fingers strangled and stifled that young girl.

October 25.

MR. DICKINSON FOR THE PRISONER.

Mr. Dickinson—Gentlemen of the Jury: I will start with the morning of the 3rd April and call attention to the position and relations of the two principal actors in this tragedy. The defendant, a young man of twenty-three,

a man of good associations and unsullied character, and which after the conclusion of the testimony still stands unsullied.

My learned friend made some reference to unbridled passion and sensualism and sadism, but I challenge the prosecution to point out one iota of testimony that points in any manner or degree to the truth or even the suspicion of the existence of any such state. This is particularly important, as it was given by the gentleman as the motive. There is nothing in this entire case to show the motive for the commission of this crime by the defendant. The young woman who unfortunately lost her life upon that day or on some day shortly after, I believe also to have been of unblemished reputation. There was no particular intimacy between these parties; they had but seldom met; she went out, more or less, amongst her social set; attended various church affairs. She was undoubtedly pursuing her study and enjoying herself and conducting herself as young ladies ordinarily do. I have been, therefore, surprised by the intimation that the defendant and this young girl were close friends. I intend to lay great stress in the course of my argument upon the naturalness upon which these parties acted, and particularly the defendant. Under the circumstances and conditions set forth by the testimony, it was not extraordinary or unreasonable that the defendant should have been on the way to the house of George King to make arrangements to meet him in the afternoon, for he had two purposes, one that he might have King's assistance in fixing the electric light, and the other that he might have King's assistance in carrying the organ down from the organ loft. It undisputably appears from the testimony that the defendant had been in the habit of attending to the electric lighting apparatus of the church. Much stress was laid upon the proposition that he had not been requested to do so by any of the trustees or by Mr. Sademan, the janitor, on the particular day which he mentioned, but by reference to Mr. Sademan's testimony it

will be found that Mr. Sademan admits that at times by the pressing of the button the first or second time the lights did not light and that was what this defendant was regulating.

On this morning the young lady was on her way to school. They met—so far as we know—by chance. There is nothing to indicate they met by agreement. They boarded the car together. Now, this young lady, as I have stated, I believe to have been a pure and virtuous girl. We know at this time she was well acquainted with the defendant. If there was anything wrong or out of the way with him, she would have known it or some of her associates would have known it. Prosecution takes great credit for having discovered the fact that the defendant and Blanche Lamont boarded the car upon the 3rd April and rode to the High School, but they discovered that fact from the defendant. On the 3rd April, in the evening, he met Mrs. Noble at the church and told her that he and Blanche had ridden to school on that day. On the 14th April, immediately after his arrest, he stated that he had ridden to school with her on the morning of the 3rd April.

We come now to the lecture given by Dr. Cheney on that afternoon. The testimony here is clear and undisputed that the defendant was at the lecture upon that afternoon and I base that upon defendant's own testimony, which I submit is clear and fully corroborated by the evidence of Dr. Cheney and of Mr. Gray and by the testimony of every other student in that class.

This undoubtedly is the pivotal point of this case—"Is this roll call correct?" If that roll call be correct, the prosecution fails in every other respect so far as leading to the conviction of this defendant is concerned. Now, then, are you convinced beyond a reasonable doubt that the roll call is incorrect?

All of the students called deny they answered when the name of Durrant was called.

Of course the answer comes back, "Well, if he was there, why does not someone come forward and testify that he saw him there?" I submit that an examination of the circumstances and conditions under which these students attend the college and which surround them during these lectures fully and completely answers the question.

There has been a great deal said here of notes taken at that lecture. I have here the book of the defendant. The defendant says that he took those notes at he lecture except two rules he copied from Mr. Glaser on the afternoon of 10th April. Now it appears from the testimony that these notes, which are now produced and are in this book, were turned over to myself on the 17th April. That has an important bearing when we come to consider the conversation with Dr. Graham.

Mr. Glaser's testimony itself does not go to the extent that he claims that his notes were copied. If this defendant had appeared at the quiz with Mr. Glaser and had not had any notes whatever, because he had not been present at the lecture on the 3rd April, would not Mr. Glaser have discovered it? Would there not have been something said or some acts of the defendant which would have attracted Mr. Glaser's attention? Yet there was nothing that attracted attention and Mr. Glaser admits that he forgot all about it until his attention was called to it at a subsequent period after suspicion had fallen on the defendant. With regard to Dr. Graham's testimony, I consider and do say confidently that Dr. Graham is mistaken. It took Dr. Graham up to about the 5th October of this present month before he came to divulge the main proposition to which he testified, namely, that the defendant had asked him to bring his notes. Now I submit that in the condition of affairs at that time, the defendant would not have asked any such question, as defendant's notes were then in the possession of his attorney and had been from the 17th of the month, three days before the interview that Dr. Graham testifies to in which defendant told him that

he had no notes and that if he could get some notes he could establish his alibi. Three days before that time these notes which I have read to you and compared, were in the possession of his attorney, and what did he want to make any such request of Dr. Graham for? That he should have asked for the notes for the purpose of comparison, as suggested by him, as instructed by his attorney—I see nothing unreasonable with regard to that. The notes of all the students have been brought here at the instance of the prosecution and are here at the present time for the purpose of comparison. I am inclined to think, Gentlemen of the Jury, that Dr. Graham's was a little case of over-education. I think he has associated with our friend Dunnigan, who was connected with the "Examiner," to that extent that the thing has grown upon him since last April, until, on the 5th October, he was prepared to say what he did. I submit that the fact of the presence of the defendant at that roll call is established beyond the peradventure of a doubt. If you are not convinced beyond a reasonable doubt that he was not at that lecture, then you have to acquit him. He swears he was at the college at the lecture and when Dr. Cheney and Mr. Gray bring forth the roll book and substantiate the fact that he was there so far as the roll call can do so, that testimony is testimony to the effect that he was there. The roll call amounts to the statement by Dr. Cheney, "I believe Durrant was there."

The testimony of defendant shows that at the conclusion of the lecture, or at 4:15 o'clock upon that day, he went to the church.

Several reporters have testified that at an interview held on the 14th April defendant said he went to the church from 4 to 4:30. I do not see that that contradicts defendant's statement. Of course, it is sought to be put in opposition to his statement on the stand that he arrived at the church at 5 minutes of 5. I think in his statement upon the stand, when he used the language that he went to the church he had in view the fact of the time when

he left the lecture at the college and he did go to the church between 4 and 4:30. That explanation is a reasonable one and satisfactorily explains the proposition. Another fact suggests itself in that connection. At the time when this statement was made, the young man had just been brought in. He had been in the jail for about an hour. He had had a sort of triumphal march across the bay and through the town; the streets were filled with extras regarding the matter; a riot was imminent and everything was in a high state of excitement. He was in the booking room of the City Prison and at that time and under those circumstances everything was confusion and excitement. He was then called upon to make a statement and under such surroundings and conditions I am gratified that he did not make any break in his statement. I am satisfied of his innocence, as much from his conduct at that time as from any other incident connected with the whole case. The only flaw that is sought to be picked in his statement is the language, "I went to the church between 4 and 4:30 o'clock." There is nothing that I can find to surmise or base an idea upon to the effect that there was any engagement whatever for the defendant to meet Blanche Lamont on that afternoon. Certainly if he had intended to meet her something would have been said about it in the morning. He would not have been running up and down in front, on the sidewalk in front of the school and before Mr. Vogel's opera glass, if he had made an engagement with this lady in the morning. When did this idea seize him to go and meet this lady? When did the change take place which my learned friends spoke of yesterday? When did he turn monster? His conduct as he has appeared in the court-room, his conduct since the time of his arrest, his character up to the time of his arrest, his entire surroundings, behavior and actions controvert and absolutely deny even the suspicion of such a character.

Now, as to what occurred upon his arrival at the church. His statement is that he went to the library and left his

hat and coat there, and that is corroborated by the witness King, with whom he went to get the coat and hat after they had brought the organ downstairs. He then accounts for why he knew it was 5 minutes to 5—because he took his watch out of his vest pocket and put it in his coat pocket, so that when he should lean over it would not drop out of his vest pocket. He then went to the library, folded his coat and left it upon the box and placed his hat on the box and then he proceeded, as he stated, and fixed the gas burner and after he got through he went down the rear way to the room where George King was playing the piano. Now, I think it will be conceded that the defendant is a young man of average common sense. I do not believe that his sense of self-preservation has been blunted. There was no reason, if he had committed this crime, why he should have gone down to Mr. King. There was nothing to interfere with his passing out through the front entrance of the church to get his coat and hat; but hearing the music, as he stated, he went immediately from that place down to the room and there had a conversation with his friend King.

If this defendant had committed that crime, why did he not go immediately away, why did he go down and see King? He could walk; he felt a little nausea and a little weakness and he accounts for how he came to have that feeling. Considerable stress was laid upon the proposition that he paused in the doorway when King first saw him. He says he did not pause. That is not a very material proposition. Some dispute has been made here as to whether one grows pale or red when affected by gas. From my observation, when one becomes nauseated, he generally becomes pretty pale. It has never been claimed by the defense that so much gas was inhaled by the defendant that it seriously affected him, but that it only affected him to the extent that the evidence shows. His conduct thereafter was reasonable and consistent. He went down the stairway; he took the ladder down and laid it in its accustomed

place. He went to the push button and turned the gas on; he turned it off. He could do all that and be nauseated and have a headache. He certainly had his senses about him when he went down to see King, because they talked about it. The remark which was made by him to King, "If you had gone through what I have you would look the same way or feel the same way," had nothing unnatural or unreasonable about it. He would not have made any remark about it if he had been guilty. There was nothing which demanded him to make any statement. And then he requests some bromo-seltzer.

Mrs. Leake did not see King when he was going out to get the bromo-seltzer, she did not see King come back, she did not see King, with the defendant, go out; yet it all happened within a very small space of time. I dwell upon these matters with some length because they appear to me to be the perfectly natural actions of the parties. The taking of the organ down from the organ loft was something that would naturally exhaust anyone.

I submit that a careful examination of all the circumstances and proceedings in that church will point to the absolute innocence of this defendant. It is impossible for human nerve to be so constructed, to be so rigid and to be so absolutely impervious to the actions of man. It is impossible that it could have happened as the prosecution claims or that this defendant, under any other circumstances which are submitted to you, was guilty of the death or of any injury to this pure, unfortunate girl. Unless the claims of the prosecution should be true as intimated, that at some mysterious moment this young man became changed from man to beast, to monster, he could not have done it. Nothing before, and nothing since, gives us reason to believe or suspect that such a change has ever taken place. After leaving the church, King and Durrant then proceeded along to their respective homes. If it be true that this defendant is guilty, he was then a monster; not a man except in form, but a monster in feeling, in passion and impulse. If he was,

how strange his conduct! He goes to his home, partakes of his dinner; he goes to the church; he meets and speaks to Mrs. Noble about the Newcomes, of his having ridden with Blanche to school and of his having promised to bring the book to her if she came there in the evening. All this was perfectly natural. There was nothing in the manner or speech of the defendant that attracted the attention of Mrs. Noble. Even when he called at the house upon the 5th April, and saw Miss Maud and handed the book to her, Miss Maud carefully concealed from him any response to his inquiry as to Blanche. Why did the defendant, if guilty, do these things? If he had been guilty, Gentlemen, he would not have done these things. During that week he took an interest which was perfectly natural, when he found that this girl was missing; and I submit that his conduct from the 3rd April down to the present time has been absolutely and unequivocally consistent with his innocence and absolutely and unequivocally inconsistent with his guilt.

All doubtful propositions are to be resolved in favor of the innocence of the defendant. No presumption is against him, and the law says further that the defendant is not obliged to prove himself innocent. That principle of law, it strikes me, is very applicable to this case, for the reason that it is very hard for anyone to account for his time, hour by hour, during any portion of his preceding existence. If any of you were asked the question, "Where were you last Friday at quarter past one o'clock?" it would be difficult for you to answer just where you were, unless some special or particular event set the time.

As to matters of identification, I know of nothing more fallible than the memory, the recollection, the opinion as to identification. The matter of identification cuts a very great figure in this case. Except in the case of two witnesses, I believe all witnesses who will swear to matters of identification never saw the defendant before the occasion and the time on which they claim to have identified him, yet they come here with their testimony most positive that they did identify him upon that occasion.

As to the fallibility of the indentification by Minnie Edwards and Mrs. Vogel, I don't say I do not believe that these young ladies or the old ladies who have testified in this case have prevaricated. I do not believe that they intended to tell a story or to falsify in the least, but I do believe that when one undertakes to say that he can identify a man that he has never seen before, one he sees but for a passing moment, under circumstances that do not attract his attention particularly, that what he has to say regarding that matter of identification is an opinion and not a fact.

I have one remark to make which applies to Mrs. Vogel, Mrs. Crossett and Mrs. Leake, and that is, if they had this information, why was it retained so long by them? I believe that anyone having information of this character, when the whole town is ablaze over the excitement of the crime which has been committed, when the papers are teeming with accounts of it, and pictures of the alleged participants appear, when it has the broadest notoriety given to it that possibly could be, when you consider the heinousness of the crime, the natural desire of every honest person to see the criminal punished, I submit that there is an impulse in the human body and in the heart, having information regarding it, to say, "Go and give that information!" Especially is that so with women. A man may become seared and blunted to a certain extent, but to woman we look for the exercise of all the better faculties of our nature. We look to the outpouring sympathy, to assistance in difficulties, and particularly to these aged ladies, mothers and grandmothers, as they are acquaintances of the parties—interested as they are and were—we look to them to perform the highest duty that one human being can perform for another, to give them that information which enables them to right wrongs of so heinous a character as the one for which this defendant is on trial; a wrong which cries to heaven it be righted. We look to them to do as ordinary people do. Gentlemen, when Mrs. Leake keeps this information in her breast for months and comes on the stand and says, "I told an old friend of mine, Mrs. Henry, that I had suspicions of who it was," and

then follows it up with the assertion, "I was waiting my time," I ask you what kind of a woman is it who waits her time? What kind of a woman is it who carries this matter for two or three months, visiting the aunt of this poor girl, visiting among the parishioners of the church, meeting them frequently, but says nothing about it, and then comes as a witness and says, "I told one lady that I had suspicions of who it was. I don't know how it got out, but I think she gave it away. I was abiding my time." If there was any time, if there was humanity in her breast that pertains to the ordinary woman, if she was normal in that respect, if there is any time when she would have come forward with that information, it was when the defendant was accused of this crime and when his preliminary examination was about to be brought on, when she knew the proper officers were foraging and ransacking the entire town, as it was their duty to do, to find out all of the evidence that there was to be found in the case; then was the time, if she wished to perform her duty, for her to have come forward and said what she knew. Not to have done so may not convict her of anything, but it may arouse suspicion. Her conduct was not natural. With regard to Mrs. Vogel, she lives almost directly opposite this Normal School. She is very precise in her testimony. She fixes it at two o'clock and seven minutes in the afternoon. She paid particular attention to this party that she observed across the street because a burglary had been committed; but, gentlemen, burglars do not go around in the sunlight of the day. Considering the fact that this defendant met this young lady in the morning, if he was to meet her in the afternoon, it would be a reasonable supposition that he would have had an appointment to do so. If that was the case, if he had an appointment, he would not have gone on that side of the street at all. As you remember, it is a double stairway that leads from this school-house. One leads towards Sacramento Street and one towards Clay. Is it reasonable to suppose that any young man, particularly a student, himself knowing the way that school assemblies are dismissed, is going over

to that side of the street where these young ladies are to come out in order to meet one of them, and chase up and down the sidewalk? The presumption is a reasonable one that he knew what time that school would be dismissed. What was he doing there at two o'clock and seven minutes? If he was there at that time how could he be quizzing with Glaser on the lecture of the 27th March? How could he have met Diggins in the library when he was talking about the books? He was not prescribing for Diggins, merely recommending where to go and get an atomizer, which is a very natural thing, for friends generally prescribe for you, and if you took everything friends recommended, the probability is that you would be dead before morning. Diggins testified that such a conversation did occur, but he does not remember the date. I submit that is a strange circumstance in this case and goes to impair the testimony of Mrs. Vogel; not that she comes here and prevaricates and tells a story; I do not say that, but her belief is based on a certain set of conditions, upon certain circumstances and perhaps even hallucinations.

We will now come to Mrs. Crossett. There is no one who respects age more than myself. There is no one who respects youth and innocence more than myself, and it is our highest duty as citizens, as husbands and as fathers to respect it and protect it under any and all circumstances, but I beg leave to call your attention to the fact with which you are all familiar, that there are two ages of life when we are all over-positive. There is no man of the age of forty-five or fifty or sixty, who has been successful in business, who knows as much about that business as his son who comes to him fresh from college at the age of twenty-one to participate and help him in the conduct of his business—provided you take the son's estimate of his knowledge and ability in the premises. That is natural to youth. They are infused with hope. They are full of the vigor of life and they are self-assertive. Therefore, we often hear the remark made to such a son, "A little experience, my boy, will tone you down; you will not be so positive after you have been in business for a little while."

Caution comes with experience until we arrive at an age when we are considered to be aged, and hence has arisen the proposition that everyone who arrives at a good old age has second childhood. There is no one more positive than an elderly person with regard to what he has seen or what he thinks or what he knows. They have not the time to stop and consider and unravel. They reach their conclusions quickly, almost as we do in youth, and they are positive in their conclusions and they act upon them fearlessly.

When we come to consider the age of Mrs. Crossett, while I do not think that she is in her second childhood, still, by the manner of her testifying and the testimony which she has given, and her age and physical condition, you should be cautious.

I will now mention something which has been commented upon very largely and that is that portion of the defendant's testimony which refers to having been touched upon the shoulder by someone. That is looked upon as a strange and unprecedented event as well as his behavior after it happened. Well, gentlemen, I do not know what experience you may have had in the case, but I judge from the remarks that have been passed in your presence here by the attorneys in the case, by the Judge and the detective force, that you must have become aware of the fact that there have been a great many people interested in this case who have furnished a great deal of anonymous information. Letters have been received by us from all quarters, usually anonymous, unravelling entirely this mystery, telling us all about it. At the time when this is said to have happened the defendant's name was connected in the public prints with the disappearance of this young lady. Might not something of that kind have happened then? Suspicion was hovering over him—was attaching itself to him; might not some crank have done that? I say crank because I judge that the average man or woman who writes an anonymous letter entirely unravelling a mystery of this kind and verifying their theory, must be mentally unbalanced. Might not something of that kind have happened? Another thing—I am advised and believe

that it is one of the oldest police tricks in the world that when a man is under suspicion of a crime for someone to make a suggestion similar to the one the defendant testified was made to him. When he is suspected, the suggestion is made to him and he will either do something after such a suggestion or he will do nothing. It tells one way or the other, and if this suggestion was not made to him and he was not shadowed at that time, how were the witnesses Dodge, Dukes, Sademan and Hoag discovered at the ferry on that afternoon? Was there anything unnatural in going at that suggestion down to the ferry? Was there anything unnatural in his conduct down there? I do not think it material to the case whether it was or not. In fact, the prosecution agrees with me that he was there for another purpose, and it was brought in merely for the purpose of contradicting him. Can we say what any of us will do when someone approaches us suddenly and makes a suggestion to look into the future? The suggestion was made to him and the suggestor immediately departed, and that he should go and take his lunch was not an unnatural thing to do—it was about lunch time. What was there extraordinary or unusual about the fact that he should have felt happy at the clew given him? He was not so particularly interested in the search for this missing girl as to abandon everything else for that purpose. At the time when the suggestion was made to him, the detectives had it in hand. He had an interview with the detective and, as he has stated to you, the only thing that he ever suggested as to this poor unfortunate girl having passed into a house of ill-repute was at the suggestion of the detective and that is no reflection upon the detectives. That was in a conversation where they were surmising as to what might be or what might have been.

I consider it a particularly unfortunate thing that there was not at the time of the discovery of the body of the deceased a search made of the belfrey, for I believe that search would have thrown light upon the crime. It would have furnished some clews or some information which, if they had been followed up properly and legitimately and by

proper officers, would have led to the detection of the criminal in the case. The testimony shows that upon the discovery of the body an officer was left at the belfrey door to prevent anyone from going up prior to the arrival of the coroner's deputies. The coroner's deputies arrived and took the body away and in the meantime no examination whatever had been made of these premises. After the body was taken away the belfry was open to whomsoever desired to get into it. There is some difference in the testimony as to whether footprints were discovered in the belfry or not, but I submit that the preponderance of testimony is in favor of the proposition that there were footprints. The letters which were in the young lady's trunk, which were never examined by the authorities, but which were sent home and destroyed, might have thrown some light upon the tragedy.

It may be that Martin Quinlan likes notoriety; it may be that he desires to furnish details to the detectives with whom he necessarily comes in contact in his capacity as a police court lawyer. I can see no other reason for his testifying as he did and that fact that his character has been impeached—all these elements must be considered by you when considering his testimony and the credence to be given it.

I submit that in Mr. Oppenheim we have a very swift and very willing witness. His memory seems to be better now than when he testified at the preliminary examination. In Mr. Oppenheim's business it is quite important for him that he should be on friendly terms with the police department; his business is largely subject to their control. Perhaps it is just possible, considering the location where he is, he may keep what is known as a "fence."

As to Miss Cunningham, I am willing that she should be condemned out of her own mouth, and I believe and think she was. With the flowers that she sent him and the food that she desired to send him, with the papers that she carried and the hours of talk. She says she agreed with the defendant that she would not publish anything without his consent and the result of the publication which she has given has caused it to be spread broadcast a hundredfold.

So I would let her sit down in her humiliation, convicted as she is out of her own mouth with treachery and deceit. She is in form and appearance a woman, therefore safe from any further criticism, but by her own admission she was the snake coiled up in the guise of a friend, leading her victim to come nearer and nearer and finally to death. Her story is unnatural, it is disconnected and it is untrue. There was no occasion for the defendant to have made any such statement, who has denied it upon the stand, and I submit that the story is without foundation and fact and unreasonable and illogical in every respect.

Gentlemen, it is very important, when you come to consider the testimony as it has been given regarding the identification of these parties and the circumstances of locating them at some particular place and some particular time, that the time should be given the fullest consideration, when we come down to consider some of the physical conditions pertaining to this matter. It has been claimed by the prosecution that this must have happened between 4:20 and 5 o'clock of April 3. I direct your attention to the physical conditions pertaining to this defendant, which will shed some light, I think, upon his ability to have committed this crime at the time, or even at any other time. He and the deceased were of equal weight, 115 pounds. She was taller than he. It is claimed they entered the church gate together at 4:20 on the afternoon of April 3 and that the deceased was never again seen alive. There is where all the testimony in this case stops. The entire remainder of the prosecution in this case becomes from that time inference and deduction. The testimony in this case is wholly and absolutely circumstantial after the body of the deceased was found. As we review the testimony, we observe that there are links—links upon links—missing. The law, as I believe it will be given to you, says that chain must be complete. Every single link must be substantial and supported just as absolutely as the main fact to which that chain leads, for it is a well known physical fact that a chain is no stronger than it is in its weakest part. We have considered all of

the witnesses as to identification. We have come to this gate and from that time on all is inference, conjecture and deduction. History and the books and current literature are full of instances of mistakes in matters of circumstantial evidence and identification. Now, then, let us consider what the probabilities are; let us take for granted, for a moment, for the sake of argument, that they did enter the church at that time, these two young people, equal in weight, in good health and in possession of their faculties. Was it possible for this defendant to have strangled that young woman in that church within that time and not to have borne some evidence upon his person or upon his clothing of the struggle that had taken place? Grant that he was frenzied with excitement and had all the strength that comes to persons under such circumstances, where was she with her strength aroused and brought forth to the very highest pitch by the circumstances in which she was? By the theory of the prosecution, she was not only protecting her life, but she was protecting her virtue, which was dearer to her than her life. Would not she have fought for that? Could he with his strength have held her? Could he by any process at all have gained absolute control over her so that she became helpless and defenseless? I say no, it is improbable and impossible. Search was made all over this church. Everything that could be found, presumably, was found and has been brought here. There is no evidence of anything with which he could have bound her. There is no evidence that he had a rope or strap of any size or anything in the world by which he could have rendered her partially helpless. The testimony of the physician is that there were seven finger marks on one part of the throat and five upon another, which shows plainly that the struggle was a violent one. Can you conceive of any process or way by which a person could, under such circumstances and conditions, accomplish the result without being scratched or having his clothing torn or something to indicate that there had been a struggle? And yet by his own testimony and by that of George King, nothing of the kind appeared. As to his

ability to have carried the body up into the belfrey, the same reasoning applies. It could not have been done. I submit this unfortunate young woman was never killed by one man. It took two to accomplish what was accomplished in that church. It not only took two to control her physically that she might be strangled to death, but it took more than one to carry that body up into that belfry and lay it out as it was and disrobe it of all its clothing and scatter that clothing throughout the church as the testimony shows it was. The defendant could not have done it. It would have been physically impossible.

Gentlemen, in leaving this case with you, I ask you to consider carefully the good character of the defendant, which stands before you today unimpeached except by the suspicions which this testimony has thrown upon it. His character has been good these many years and there is not a particle of evidence that his character was not at all times uniformly good. His conduct has been entirely natural throughout this entire trial and since the day of his arrest. What motive could he have had for doing such an act? What motive had he for wrecking his home and his life and his future? None could be shown. None has been disclosed. None could be deduced from this testimony in any way. Men do not act without motives. There must be some cause for their action. There is no malice shown which is necessary to constitute the crime of murder, as I understand the law, or evidence showing a degraded or abandoned heart. None of these attributes appear. He stands with his character unsullied, as it has been for years, not only for honesty and integrity, but for morality and industry. He was a young man who, to help himself along in life, was getting up at 3 in the morning for years, carrying and distributing papers. He has enjoyed the good will and the good opinion of those who have known him all this time, and of those who have taught him at school; and these matters are not to be passed lightly over, as they are elements of great and vital importance, when you come to consider the possibilities and the probabilities of the defendant's having done this or not.

Do with him as you wish to be done by, or to have yours done by under similar circumstances. Be careful not to be swayed by public opinion or the public prints. Let the case be decided upon the evidence which has been presented and upon the law which his Honor will give you, and we will be satisfied with the result, however it turns out. We believe that we are right, we believe that we are innocent, and we believe that the prosecution has failed absolutely and entirely to prove its case. We have made our fight and now we leave the matter with all the resulting contingencies in your hands, confident that you will do what is right and that the result will lead to the restoration of this defendant to his family and to his pursuits and again open to him a future bright and rosy as it was when these suspicions fell upon him.

MR. DEUPREY FOR THE PRISONER.

Mr. Deuprey: The importance of this case, the great interests that are involved, causes me to come forward to perform duties when in no condition to perform them, but there is in this case a life at stake. It is in your hands to pass the verdict as the judges of the fact whether this young man, Durrant, shall live or die. It is a matter of the most serious concern. We claim on the part of the defense that an awful wrong has been done to this defendant and his family. You have been brought here, gentlemen, to say whether or not the proof is sufficient to justify the finding of a verdict of guilty on such proof as has been offered by the prosecution. I submit to you that from all you have heard from the witnesses who have testified in this case on behalf of the people, they have established but two propositions, viz., that on the morning of the 3rd April, 1895, Blanche Lamont met W. H. T. Durrant and that they rode on the cars together as far as the High School, where he left her and continued on to the Cooper Medical College. The only other fact proven is that a little after 5 o'clock on the same afternoon Durrant appeared between the folding doors of the Sunday school of the Emmanuel Baptist Church, where George King was playing the piano, and there stated that he was overcome by the gas. What other fact have they established that they claimed in this case they could prove? They asserted to you that they would show that this same man, Durrant, was seen at the corner of Clay and Powell streets between 2:07 and 3:05 o'clock on the afternoon of April 3; that they would establish by three schoolmates of this young girl, Blanche Lamont, that one of them entered the car at the same time that she got on the dummy portion

with a young man who they say is W. H. T. Durrant, as the car was going south towards Powell street.

Let us sift for a moment the nature of the proof that you are called upon to believe. Mrs. Vogel you had an opportunity to observe on the stand; a very elderly woman, a very excitable woman, a person who evidently would have strong impressions made on her, having a strong, over-excitable, nervous nature. She states that she saw this young man walking up and down there for two hours, but further on admitted that it was seven minutes past two when he was seen walking up and down.

Some of the statements of Mrs. Vogel in regard to her not being in the habit of reading the newspapers were contradicted by the testimony of her husband, and the poor woman, from her excitability, has come to the courtroom and looked upon this young man, as, witnesses do, who make just such mistakes, she jumped the fence, and concluded that he was the same young man she had seen through her opera glasses, with a cut-away coat and light pants, as she saw him in the court-room, which sort of clothing was not worn by Mr. Durrant on the 3rd April at any time. The testimony of the young ladies who claimed they saw Durrant on the 3rd April, in regard to the identification of the defendant, from the surroundings under which it was made must necessarily have but little weight.

Gentlemen, as intelligent men, does it not make you blush to believe that in an intelligent community, where a man is charged with the crime of murder, that he should be brought forth in the manner testified to in this case, virtually saying to the parties there who are brought to identify him, "That is the man"? Can you believe that these parties could be certain to such an extent that their testimony is worthy of belief, to satisfy you to such an extent that you would pass on the great question in this case, whether the man is guilty or not?

The testimony of the witnesses as to the time when Durrant arrived at the church, was at variance, and this state of affairs should give weight to the testimony of the defendant, corroborated by Carter and Ross, that he was at the Medical College at the time he is claimed to have been at the church.

Durrant accounts for his time at the College until the calling of the class of Dr. Cheney at 3:30. On the part of the defense, when we opened our case, we asserted to you that Durrant between the hours of 3:30 and 4:10 to 4:15 p. m. of April 3, was at the class of Dr. Cheney; that Dr. Cheney knew that his roll was correct and would say so, and, as we claimed, would say that he believed Durrant was there. Dr. Cheney did come here and testify to the fact that his roll-call was correct and we then came forward with stronger proof. We verified the roll, man by man, and proved it stronger. We then further strengthened our position by the testimony of the defendant, who tells you he was there; that he answered his name, and he is entitled to your absolute belief upon the subject until you have positive proof as against him.

Let us for a moment take into consideration the testimony of Mrs. Crossett as to what she saw. As to her identity of Durrant, he was not inside the car; his face was not toward her. She saw somebody that she thought looked like Durrant on the dummy outside, the back of his head and the side of his face toward her, talking to some young woman whom she could not recognize. Is testimony of that character, no matter how respectable the old lady may be, sufficient to justify you in believing that young man was on the car?

As regards Mrs. Leake, allow me to submit to you this, gentlemen. If Mrs. Leake's eyesight is so keen as to take Miss Lucile Turner for Miss Blanche Lamont, I do not think you can put very much faith in the theories or the suggestion or the supposition or beliefs, or the assertion of Mrs. Leake upon the subject of appearance or size.

At the time the crime was committed neither Mrs. Crossett nor Mrs. Leake had even a suspicion that the defendant was the guilty party, but with constant reading and with the aid of their fanciful imaginations, they were at last led to suspect, and then to be convinced that the person that they had seen on that day was no other than the defendant.

Quinlan's character was put in the balance here, and in all the city and county he could not find a man, friend or soul to come forward and say a good word for him. Is it strong enough, gentlemen of the jury? Does it convince your minds? Is it of a character that you can believe for a moment, in any wise, to pass even upon the liberty of this defendant, let alone his life?

We claim that we have proved to you, by satisfactory evidence, that Durrant went from the college at 4:10, went to the church, arrived there about five minutes to 5, went into the library, took off his coat and hat, took out his pincers, and what other little instrument he described to us that he had to use for the gas, and went immediately to the belfry. It was a matter that he desired to do in the morning, and there was to be a prayer meeting in the evening and no time to be lost. You find where he went between the ceilings, and got to work on the gas burner nearest the auditorium; how he comes down from between the ceilings and tries it, and then proceeds to where his friend King was playing on the piano, which he could and in all probability would have avoided if he had been guilty.

We submit that the links that they have sought to make—to forge—as between the meeting in the morning and the time of Durrant being at the church in the afternoon are entirely wanting by any evidence that you can recognize or receive as intelligent and law-abiding citizens.

There is one strong proposition in favor of the position that is taken by Mr. Durrant. You find from the time he was arrested until the time when his story is told here upon the stand that it is the same. Have you never heard, gentlemen, when a person is said to be missing that anyone who has known him is immedi-

ately put under a shadow, and at once a cock-and-bull story is told to see how it will take effect and how the party would act? Probably if we could get at the depth of all this matter we might know who the very man was who approached this young man and told the story in order to see what the effect would be. There is nothing unusual in it. He tells you the true story. If he was trying to escape by lies or chicanery he never would have told you that; but he tells you how it happened and what he did under the circumstances, he believing in good faith that something might be discovered. He has shown himself to be a friend of the Noble family. He has shown himself to be a friend to the memory of Blanche Lamont. No one more than he is in bitter sorrow at her untimely taking off, by whomsoever it may have been, and he would indeed be glad if any light could be thrown on this subject.

We then find, gentlemen, that so far as the conduct of Mr. Durrant from that time on is concerned, it is consistent with that of an innocent man; from the morning of the 3rd April until now, and for all time.

There were other suspicious circumstances about the church than the visitation of Mr. Durrant there; the chisel found exactly fitted the marks on the casing of the door and the handwriting on the parcel which contained the rings and which was sent to Mrs. Noble, was not dissimilar to the handwriting of the Rev. Gibson. Had the Rev. Mr. Gibson been on trial instead of the defendant, he would have found himself in a most unfortunate predicament.

Now come down to the proposition in relation to these rings of Mr. Oppenheim. We ascertained that a man named Lenahan did, as a matter of fact, go to Mr. Oppenheim with a chip diamond ring, and then he did it, as he says, between the 4th and the 10th April, but according to books which are shown, the 13th April. Now Lenahan had on a blue overcoat with velvet collar and a slouch hat. He told the conversation with Oppenheim precisely, as we claim, as he detailed he had with Durrant; and when he left the store he took the same direction therefrom, namely, towards California street. Mr. Oppenheim is simply mistaken. He got it into that brain of his that he must know something about it, and he comes down here and tells about the Lenahan conversation of the 13th.

We place ourselves fairly in this position. That circumstantial evidence is of a most dangerous type; and you can come nearer making a mistake where the evidence is wholly circumstantial, than you would in direct evidence; and as an illustration of my views in that regard I wish to call your attention to a case which took place here in the State of California, not far from our burg, and which was stated to me by the one who made the annals at that time, Zach. Montgomery. In 1851 a murder was committed in Yuba County by a man named Stewart, and a man supposed to be Stewart, but calling himself Burdue, was arrested and tried in the City of Marysville for the murder.

THE COURT: Mr. Deuprey, in what view do you offer to read these matters?

Mr. Deuprey: I am not reading it as law, sir.

THE COURT: I simply want the jury and counsel to understand, that I will not permit it if it is offered to the jury as law, or if is read to them as facts. There is no way this jury can get knowledge of any facts not within their personal knowledge except by the proof before them, the proof coming through the proper medium, as recognized and provided for by law. As I was about to say, it is very frequently done to illustrate the argument of counsel. My own impression is that it is a very bad practice, and yet, I do not know that counsel could be prevented from reading it in illustrating his argument. You might read a chapter of the Bible or a historical fact or anything else, but the jury will understand it is simply to illustrate the point counsel is making.

Mr. Deuprey then read the Marysville case. (See ante p. 715.)

Now, gentlemen, I claimed at the opening of the case on the part of the defense that we were then entitled to go to you without any statement of any nature or any character upon our part, and ask the Court to instruct you as to the law, and that you would be bound to acquit, because the prosecution had made no case. I assert that still. But we thought you were entitled to hear the man who was charged with so heinous an offense—an offense that human punishment has not been created sufficient to meet the necessities of. They never have established to your mind by any proof who killed Blanche Lamont. If you want to build a theory, if you want to stand on suppositions, you may consider it was by persons who had taken this girl and drugged her in their room the night before and then taken her to this church. Is not that just as likely? Dr. Barrett did not save any of the vital organs of the body on which microscopic or chemical analysis might be made as to the real cause of death. All that he could say to us was that the same appearances existed on the body that accompany strangulation, but he could not say whether there was strangulation or not.

There is no proof before you as to who killed Blanche Lamont. There is no proof before you as to where she was killed. You cannot point out to me an atom of evidence that shows it was in a church or in a stable, or in a back lot or yard, or in the private room of some scoundrel. You have no proof of who, or where, or when. If it comes down to the proposition of motives, have you any evidence of motive in this case on the part of Durrant so far as it related to Blanche Lamont? His conduct as related by all the persons connected with that church shows that he was ever respectful—he was ever the gentleman to that young lady.

You have before you the character of W. H. T. Durrant from the date of his birth, from the moment that he knelt at his mother's knee and learned his prayers, with only the knowledge of good and never the knowledge of bad. The Court will tell you that if a person is charged with crime, and he does not put his character

or reputation in the balance, it cannot be attacked; but if he does, then it is an open field for the prosecution to attack. We placed his character and reputation in the forum and dared them to attack it.

I submit to you, gentlemen, that he stands here unassailed and unassailable in character, and no motive has been shown. No person has been proved to have committed the deed. You have no evidence as to when or how it was done. You simply sit here as jurymen sworn to perform your duty in your position, and you have to accept the condition; that under the circumstantial evidence and the law given you by the Court, you must acquit. The tie which links mother and child is of such pure and immaculate strength as to be never violated, except by those whose feelings are withered by vitiated society. Holy, simple and beautiful in its construction, it is the emblem of all that you can imagine of fidelity and truth. It is the blessed tie whose value we feel in the cradle and whose loss we lament on the verge of the very grave, where our mother molders in dust and ashes. In all our trials, amid all our afflictions, she is still by our side. If we sin, she is by us, and reproves us more in sorrow than in anger; nor can she tear us from her bosom, nor forget that we are her children. The love of the mother is never exhausted, it never changes, it never tires; it endures through all; in good repute, in bad repute, in the face of the world's condemnation, a mother still loves on. She remembers the infant smile that once filled her bosom with rapture, the merry laugh, the joyful shout of his childhood, the opening promise of youth, and she never can be brought to think of him all unworthy.

No love is like a mother's love,
Unselfish, free and pure;
A flame that lighted from above,
Will guide, but ne'er allure.
It knows no frown from jealous fear,
No blush of conscious guile;
Its wrongs are pardoned through a tear,
Its hopes crowned by a smile.

I call your attention to these sentiments, that when you come to consider this case you will be careful in weighing the evidence by any light. I come to beseech you, gentlemen of the jury, more than anything else, to listen carefully to every word that comes from the lips of the Judge of this Court in giving the charge. It is true that you are the sole judges of the facts, but the law as he gives it must govern and guide you in coming to your conclusion.

May you in your deliberations come to such a conclusion that you will say to his mother that her boy is the same as he has ever been, a Christian youth, a Christian gentleman, wedded to his home, wedded to all of his family. Let the flashes of lightning go over land and under seas to that waiting and anxious sister, to say that her brother Theo is the same good and upright man that he ever was. Say by your verdict to this broken-hearted father,

crushed by the awful wrong the law has done to his and to him, that his son is not a monster.

Let it be said by your verdict that no unlicensed condition of the press may swerve you one moment from the truth. Let it be known to the public and the commonwealth throughout the United States and the world at large that you, as citizens of this city and county, respect the Constitution of the United States, and revere the organic law of your own State, which gives every man a right to a fair and impartial trial, and by your verdict of not guilty, show forever that you are mindful of your duty to yourselves, your families, your country and your God.

October 30.

MR. BARNES FOR THE PEOPLE.

Mr. Barnes. Gentlemen of the jury: The individual who perpetrated the hideous crime with which the defendant stands charged, and which has harrowed the soul and frozen the blood of this community, is no ordinary criminal, and his crime in every respect in which it may be considered is without parallel. It was not committed under a blind and furious impulse to revenge some real or fancied wrong to his person, his property or his character, not from motives of gain, nor in the commission of robbery, nor yet under the hot spur of jealousy—that hell of the injured lover. It was in every sense a cold-blooded, vicious murder. It was without the slightest provocation or apparent excuse or palliation.

The assassin chose for his victim an innocent and helpless maiden, in years almost a child, almost a stranger in our city, a simple school girl temporarily residing with her relatives, and engaged in the struggle to obtain an education as a teacher in the Normal School. She was undeveloped in mind, pure in life and thought, of simple and unsuspecting nature, and presenting in body none of the qualities or characteristics which are supposed to arouse the evil passions of the seducer and the libertine.

For the scene of his dreadful assault the murderer selected an Evangelical Church dedicated to the worship of God, a temple where the doctrines and life of Jesus Christ

were taught and illustrated in Sabbath assembly, in mid-week prayer meeting and in social gatherings.

He took the life of his victim not with the savage mercy of the quick pistol or the salient knife, but he tortured her with the lingering process of strangulation, and so fiercely did he do his devil's work that the stigma of his crime remained until the discovery of her body, clearly discernible as the cause of death, not only by the expert surgical examiner, but by the most unlearned observer. What other, if any, wrong was done her before her soul exhaled and went to heaven, we do not know. The advancement of natural decomposition baffled investigation and made knowledge impossible.

But we know that, either living, or dying or dead, she was taken by him up the steep stairs of the steeple to the belfry of the church, where he supported the poor body with blocks of wood and left it there to rot in nakedness and wither in the cool western wind that swept through the lofty spire. He hid the remains where he believed they would remain undiscovered and have no promise of Christian burial, after having first stripped the delicate form of all its clothing, which he distributed among the rafters and beneath the ceiling of the edifice, as if he revelled and rejoiced to pollute every available spot of Emanuel Church with the spoils of his horrible sin; sin that might make hell itself tremble and deprive its chief denizen of the grim and ghastly honors of his perdition.

To accomplish what this monster did required a man of an utterly abnormal nature, of extraordinary strength of will and absolute density of moral sense—one of those whom moral philosophy designates as moral idiots; creatures of keen perceptions; shrewd in devising; intelligent in execution; with mental faculties even above the average, yet wholly unable to distinguish between virtue and vice, sin and holiness. Gentlemen, a man who could lure to such a place an innocent girl, murder her by strangulation, deposit her body in such a tomb, secrete her clothing and her books, and who could, with the dreadful image of the crime ever

before him yet go forth among his fellow men, attend God's worship in the spot of his dreadful violation of human and divine law and wait on little children in the Sabbath school, such a man is of such rare quality that if confronted at last with the proofs of his crime, he could and he would, as he has done, sneeringly smile in the awful presence of the relics of his victim, and exhibit neither passion nor emotion, neither sympathy nor regret for the unfortunate child he had brought to a premature grave.

Gentlemen, I have felt her presence during all the long and tedious days of this important trial. I have seen her as she was on the 3rd day of last April, as she left her school and her class with her little burden of books and papers. I fill again that slender robe with her girlish form. Above it I see her sweet face, hallowed by its wealth of hair, her gentle eyes, her smiling mouth dropping kindly words, bubbling up from the unpolluted depths of a pure heart. I have seen her as she was when the defendant addressed her at the door of the Normal School. I have so seen her every day. I see her now! There she stands behind him at this hour; not praying for vengeance for her deep and remediless wrongs, but with uplifted hands and streaming eyes praying that God will not put it into your hearts, by the mockery of a verdict of not guilty, to set free this monster to prey upon other gentle souls, pollute with vile hands the unsunned snow of other children and defy anew that God of justice whose ministers you are.

At the very inception of this case, the following problems were presented to the law officers which they had to solve and present to the jury in chronological order and as clearly as it could be done:

First. Was there a dead body found in the Emanuel Baptist Church, in this city and county, on April 14, 1895? Second. If so, whose was that body? Third. Did death result from natural causes or was it by violence? Fourth. If by violence, was it accident, suicide or murder? Fifth. If it were murder, when and how was it done and who did it?

What is the answer to the first proposition? Our answer is this: That on the 14th April, 1895, a body was found in the Emanuel Baptist Church on Bartlett Street, between Twenty-second and Twenty-third Streets.

That being the case, whose body was this? To whom did it belong?

Gentlemen, that night, the night of 14th April, all over the wide city, on the streets, in theaters, clubs, churches and hotels, everywhere that men congregated and everywhere the universal voice of the telegraph carries its message, it was known that a body had been found in the belfry of the Emanuel Church and that the body was that of the lost girl, Blanche Lamont. That is the answer to our second question.

We are, then, brought chronologically and in proper order to our third and fourth propositions, which are joined together by the inexorable logic of events and by the method in which we are pursuing this investigation. It is manifest from the examination of the surgeon and from the testimony upon the stand that death resulted from asphyxia; that asphyxia was caused by strangulation and that that strangulation was caused by the hands of someone—not the hand of the girl herself—because the doctor tells you and you know yourselves, from the mere statement of the case, that such a thing would have been impossible. That being the case, that young life having been so put out by strangulation, by violence applied by another person, it was in the popular language and in the language of the Courts and of law, murder—plain, manifest, cold-blooded murder. It was more than murder. It was assassination. It was the kind of murder that the British government spent over ten million pounds sterling in India trying to root out, trying to disperse and end the career of the religious denomination of thugs that infested that country. It was plain, ordinary strangulation and assassination.

What could have induced that murder? There is a motive for every crime. There is a motive to this crime; but the motive we must deduce from logical circumstances

and established facts, because in no other way can the demonstration be made. What was this girl killed for? We cannot tell. Nobody can come here before this jury and testify as to what advances were made to this little girl in the church. What did he say before he knew that that girl rejected his advances, as she did, because if she had not she would have been alive and we would not have had this murder trial on our hands?

What did he see before him, as this girl turned to flee down the stairs to the belfry? Why, he saw his good reputation, that has been testified to, swept away by the breath of the wind. He saw himself brought up before that congregation, and brought up in court and tried, not for murder but for indecent assault. He saw the law in front of him. He saw exposure, detection, disgrace. And he leapt on that girl, and caught her by the throat and strangled her to death.

There is the motive for you. And I say it is the proper deduction; it is the right one, the necessary one, and the only one that could be drawn to show the motive in this case, to show that this murder was a murder, not for murder itself, but was the lust murder of a perverted and debased sexuality.

Having established the *corpus delicti*, we are now brought to the main fact in this case, which we have been trying for the past three months: Who was this murderer and when did he murder this girl?

I have often thought, as I have studied this case, what a moment that would have been when Blanche Lamont was introduced to this defendant, if, from her Father in heaven, some premonition could have come to that poor child to let her cast her eye out of that church into the future! If she could have seen, as she stood there in that Sunday school room, with the knot of worshipers about her, with the Biblical pictures, pictures taken from the New and Old Testaments, hanging upon the wall, with the blackboard written over and painted cards with phrases from holy writ: "Feed my lambs," "As you have done it unto the least

of these little ones you have done it unto Me," "I am the Shepherd," "Those who believe in Me shall not perish, but shall have everlasting life," if, when she stood there in that Sunday school room, surrounded with these good church-going people and with those texts and parables—if she could have looked far off into the future and could have seen that dim and desolate belfry, if she could have seen there the convulsed features and the congested eyes and the disheveled hair of this murderer as his hands met upon her throat—how she would have shrieked and fled from that first introduction! How she would have fled from there, if she could have thus foreseen! But she did not. She was not given the gift of prophesy. From her eyes was not raised the veil that hides the things to come. But she seemed in some unknown way, for some mysterious reason, to be attracted by his suavity and the man, to a certain extent, must have been attracted by this girl. There she met him—at Mrs. Noble's introduction—and from that time began this acquaintance.

He visited her at her home. Who else visited there? Only upon one occasion did George King accompany the defendant and Blanche and did Mr. Wolff go with them. Whenever anybody went to that house, as far as we know from the evidence, there was the defendant. If the defendant was not there and alone, he was the bob on the kite of somebody else who was there.

He accompanied her on one occasion to Golden Gate Park. That was a long afternoon, immaterial, perhaps, at the time, but in the light of these developments of the greatest importance. After being away for three hours, he brought her home, saw her aunt and apologized to her for being so late—thought he had kept her out too long. Mrs. Noble said it was all right. He was a good young man. She had been three hours with him in the park, but there was no trouble about it at all. She had confidence in him. She liked him; he was a pleasant fellow. He was a smooth, easy, oily scoundrel, winning his way to a girl's heart.

Why should a girl who knew that her aunt did not object

to her going to the park with him and spending three hours—why should she object to going to any respectable place like a church with this defendant in the daytime? How could she tell that, unfortunately, his blood was smoking with passion? She could not think of that. She could not look through that. That was the crawling serpent that wound its slimy convolutions about her. She could not see through this pewter-imitation-of-a-silver-pot dandy. Upon another occasion she went to his house with him. He accompanied her to and from many of the meetings of the church—the services themselves; the Sunday school services; the Young People's services.

I will now ask you to turn back with me the pages of your lives until the 3rd of April last—that day which has been so pregnant with terrible catastrophe, with destruction of virtue, the destruction of home and the peopling of that graveyard far away from here up in cold Montana where the victim of that day's tragedy sleeps her everlasting sleep, sentinelled by the snow-capped mountains of her northern home, and where she shall repose until that day when crag and chasm shall be no more, neither hill nor valley, nor great old ocean, but all things shall arise and shine in the light of the Father's countenance because Himself has risen.

There she lies and the first day upon which her wandering footsteps carried her towards her distant resting place was the 3rd of April, in the morning about half-past eight. I do not say that on that morning he had made up his mind to murder her, but for what other purpose he wanted to be alone with Blanche Lamont he had already determined in his own mind. What was the reason he did not deny that he was on that Larkin street car with Blanche Lamont on the morning of the 3rd? Why did he not deny it and set it up as a failure of identification by Shalmount, as he denies the fact of identification by the other witnesses? I will tell you why. It was because there was a ghost that would not down. It was because, like all criminals who ever committed crime, before he got through with his crime, before the heavy hand of the law was laid on his shoulder,

he had to follow the historical parallels that come down to us in every case, from the time when Cain killed Abel down to the present moment. He had to talk about it; he had to say something and see if he was suspected of the murder of that girl.

The human heart is not made to contain a guilty inhabitant like this and not have it spring from the lips at some moment. A man has got to talk; his breast will not hold it. He feels it bubbling up to his lips and demanding disclosure. That is what happened in this case.

There was Schlageter, a friend, a companion, and an associate of this defendant; and three or four days after the 3rd of April, as the defendant and Schlageter were coming down on the cars after the disappearance of Blanche Lamont—after she was resting up there in the belfry, circled by the winds above her and the clouds, the finger of the spire pointing up in an unending litany to God, and calling down on that church, blessed once but cursed now, not the prayers of the saints, but the curses of true believers—at that time, I say, knowing where that girl was, he said to Schlageter: “Did you see me on the car with a girl the other day?” “Yes, I saw you.” “Well, you know that was Blanche Lamont, the girl that disappeared.” He went on to college, where he sat trying to think of the work that was on hand, but above, about and around him was that circling smoke and red haze of lechery that made him see as in a glass, darkly, and always before his eyes, the figure of Blanche Lamont. He could not tell when the Normal School let out. He had not been there before; therefore he must be in time if he was going to meet her.

Anxious, excited, stirred up to a pitch of animal exaltation and animal excitement, this man could not attempt to sit in the Cooper Medical College, in the lecture room and put his mind on what was before him. He had to get up. He had to go to the school and wait for that girl to come out. He could not wait to meet the girl by accident, as he says he did in the morning. He had to get up there in plenty of time, and there he waited, anxious, excited, nervous,

worried, passionate, wrought up, for this girl to come out of school, and tramped up and down that street waiting for her, like a tiger waiting for his noonday meal. There he waited.

Gentlemen, the hand of Providence has been in this case from the beginning, for no human creature, no human wisdom could have brought this case to the conclusion that it has been brought to; could have followed this defendant as he has been followed without the act of Providence. By the most fortunate of all circumstances, the most fortunate for justice, and the most unfortunate concatenation of circumstances for this defendant, on the opposite side of the street, at 919 Powell, sat Mrs. Vogel.

Here we have these people on the car. Mrs. Vogel saw them get on the car; did anyone else? Why, certainly. Miss Edwards, the classmate of Blanche Lamont, came out of the Normal School with her and walked down to the corner of Clay and Powell and there Miss Edwards testifies he came up and addressed Blanche. What motive could Minnie Edwards have in seeking to swear away the life of this man? What possible conspiracy could have been entered into between this old German lady and Minnie Edwards, the school girl at the Normal School?

It is monstrous; it is improbable; it is against all human experience; it is impossible that any such thing could have been entered into.

As the car reaches California and Powell Streets there were two other young ladies, also members of the Normal School, whose names have been associated with the interests of justice, not with the interests of the prosecution. Mrs. Dorgan, then Miss Alice Pleasant, and Miss May Lanigan saw the couple on the Powell street car at the corner of Sacramento and Powell Streets, occupying the same position on the dummy as testified to by Mrs. Vogel and Miss Edwards. There they sat on the dummy—Blanche by the window, Durrant next to her. He had one of those poor little books that have been introduced in evidence before you, that were found up there in the belfry of God's

church, stowed away and hidden from human eyes, in his hands, looking at it, and made some remark to her, poor child, that made her smile, and she was smiling as the car reached the corner of California and Powell. Do you suppose, gentlemen, she would have smiled at any man she did not like? Do you suppose she would have permitted any man she did not know pretty well, in whom she did not have a great deal of confidence, to get on the dummy of that car with her, take her book out of the strap, open the book, and apparently read something to her out of it that amused her? There they sat on the car. What motive could Miss May Lanigan have for saying that this defendant was upon the car with Blanche Lamont if he was not there? What motive could Mrs. Dorgan have in saying that this defendant was upon the car with Blanche Lamont if, in fact, he was not there? What motive, what conspiracy, what deepest, blackest, most damning villainy could induce two pure and innocent girls to get on that witness stand and swear away the life of this defendant, if in fact he was not the man who sat on the dummy with that girl?

You might say, gentlemen, that Miss Lanigan was mistaken, or that Mrs. Dorgan was mistaken, or that Mrs. Vogel was mistaken, or that Miss Edwards was mistaken, individually, but there are four. You cannot get four people in the world together, under such circumstances, each with a motive for observing this girl and the man who was with her, and then have made a mistake about it. It cannot be done. If this defendant was at the corner of Clay and Powell Streets, and was seen by Mrs. Vogel, Miss Edwards, Mrs. Dorgan and Miss Lanigan, he was not at the Cooper Medical College, where he supports himself with that rotten roll call that we will let the sun through like a sieve when we come to investigate it.

Gentlemen, along this car goes. It gets down to the corner of Market and Eddy. This is where Miss Edwards leaves and when she got up to move out of the car, she saw these people again on the dummy. She says it was this defendant

who was there. Is Miss Edwards going to be mistaken twice?

October 31.

Mr. Barnes: It was a fortunate and happy coincidence for justice that upon the 3rd day of April Mrs. Clancy-McKee should have given a lunch at her residence on Washington Street, to which she invited her grandmother, Mrs. Crossett, and her aunt, Mrs. Crossett's daughter, Mrs. A. B. Perry, of Alameda. That this was on the 3rd day of April there can be no question. Mrs. Crossett says she left Mrs. McKee's house about 20 minutes past three in the afternoon. She is corroborated in this by Mrs. Perry. Here was Mrs. Crossett, a nice, charming, gentle old lady, to be sure, with the burden of years upon her shoulders, but, gentlemen, that can make no difference. Her eye was clear, her brain was normal. She had known this defendant for three or four years. She sat inside the Valencia Street car on a seat removed from the glass at the front end of the car, and she saw this defendant and Blanche Lamont sitting on the dummy. There she sat from the junction of Market, Haight and Valencia Streets, with the defendant on this car until they got to Twenty-first or Twenty-second and Valencia Streets. What motive could Mrs. Crossett have to come here at her time of life and state what is not so? It is very easy for anyone who saw that old lady on the stand to see that her race is almost run—that her life lies behind her. Upon her gentle head already gleams the sunlight of immortality. Do you, then, believe she would come here to say that this defendant was there, if as a matter of fact he was not there? She noticed them so closely that she noticed when the boisterous winds compelled this lady to hold her hat on with her hand; she noticed how they wrapped her dress around her meager form as if they knew how soon that clothing was to be stripped from that little body and sought to protect it with their thousand fairy arms.

What does this method adopted by the defense in the cross-examination of Mrs. Crossett indicate? Does it not

indicate to you, as it does to me, that hope was abandoned when that lady went upon the witness stand and swore as she did? She imagined she saw him. The retina of her eye was flattened. It was hallucination and delusion. She had been reading about this in the papers. Gentlemen, it was the final identification of this defendant—the final thing upon which the State relies. The State challenges attack upon its position in this question of identification of Mrs. Crossett, because we depend upon it, we rely upon it—justice relies upon it.

What were they doing when observed by the witnesses who have testified here? Conversing earnestly. When they got off that car at Twenty-first and Valencia Streets, this defendant had not yet persuaded that girl to enter that church with him—not yet. All the way out he was talking about it. What specious promises, what honeyed words, what reasons, I do not know. Perhaps it was “The New-comes,” which was in the church, which he said was in the Sunday School library. Perhaps it was the view to be seen from the church belfry. Perhaps it was the organ or the piano; but he had not yet induced her to go to that church and, in my judgment, they got off at Twenty-first and Valencia Streets for that reason, and because, also, that was the way to the girl’s home; and they walked down Twenty-first Street and stood and talked; and from this talk and earnest conversation this girl finally agreed with this defendant, and they turned into Bartlett Street. Quinlan came loitering out Valencia Street looking at the workmen putting in the electric wires, and when he got to the corner of Twenty-second and Bartlett Streets he saw this couple coming up Bartlett. He did not know the young lady, but he knew Durrant by sight. The couple passed so close to him on the corner that he said he stepped back two or three feet to let them pass by. Blanche Lamont was on the outside and they were engaged in conversation.

But upon this day, this particular day, there stood Mrs. Leake at her window; she was looking for her daughter, and as she stood there, looking down the street, she saw this

couple coming up, just about the spot where Quinlan says he lost sight of them. They were walking together engaged in conversation, the young lady on the outside nearer the street and the young man on the inside just as Quinlan says. Mrs. Leake knew Durrant; she had been a member of that particular congregation of the Baptist Church for fifteen years. She had lived opposite the church for two years or more. She could not see the girl's face because the girl was on the outside of the walk conversing with him, his face turned to her and the young girl's face toward Durrant. They walked up to the south gate of the church. Durrant opened the gate; the young lady stepped in, Durrant in behind her; the gate was closed, and Blanche Lamont, between fifteen minutes past four and twenty minutes past four on the afternoon of April 3, 1885, had disappeared forever from human eyes.

Eleven days later her body was found, naked and rotting, under the belfry, and the hat that she wore when she left the Normal School and which she wore when she turned into the gate of that church, was found beneath the platform. These poor little relics of mortality were found hidden among the rafters and in the ceiling of that church.

Gentlemen, she never came from that church alive. She went into that church walking with that monster. She passed through the south gate into that church, through the weeds and desolation of the churchyard, to the south door that opens into the infant class room; and there at that door, though no human eyes saw him, from his pocket this defendant drew his key. Still conversing, he bent down and unlocked the door and she stepped inside. He withdrew his key, stepped in after her, locked the door behind them, and they were alone.

There she was with him, alone. In that great building, alone. This weak and sickly child, the girl whose slender form but filled the dress that rests upon that model, unable physically to cope with this monster that led her there alone, and as the Russian proverb says, "Heaven so high, and the Czar so far off."

There is no one who can be brought to you to tell you the details of this murder; but, gentlemen, there are the circumstances, undeniable, immutable—the silent witnesses of the awful crime in that lonely belfry, from which and by which we can reconstruct the entire tragedy unerringly, perfectly and surely upon the stage of this court of justice. We can reconstruct it by the same sure, steady, inductive and deductive reasoning from known facts, as the natural historian builds and reconstructs before our astonished gaze, from the bones laid bare by a glacier or volcano or earthquake, the revenous monster of the pliocene age. By the same reasoning and the same process I shall present to you, and try, in my imperfect way, to open to you the murder that took place in the belfry of the Emanuel Church on the 3rd of April, 1895, when Blanche Lamont was the victim and Theodore Durrant the assassin and thug.

What kind of a reason, what kind of a motive could appeal to a man to say that he was not at the place with the girl whose dead body was found there in the belfry? What is the reason? It is because it is the only thing he could do. Because if he confessed he had been upon this course in the way we have traced him and went to the door of the church with that girl, whose rotting body was found in that belfry, by the inference, and as a matter of fact, he would be confessing that he murdered Blanche Lamont. That is the reason.

As to what transpired in that church for that three-quarters of an hour we show by circumstantial evidence.

Gentlemen, this man, perhaps not then with the idea of murder fully implanted in his mind, but soon to stand out as the most atrocious criminal in the history of American criminal jurisprudence—a character beside whom Holmes, now on trial in Philadelphia for the murder of men, women and children for their insurance money, beside whom Holmes is a gentleman and a scholar; beside whom the first man that ever committed a murder and resorted to an alibi, Cain, who killed Abel, looms up as the George Washington of murderers; a man beside whom the robbers who killed Ibicus

were soldiers and gentlemen; a man beside whom Professor Webster, who killed his creditor, who dunned him for money he owed him and which he could not pay, and who was hanged for it; this man took this girl alone into the church and walked with her through the infants' class room and thence to the library.

What was the reason—what was the thing that brought that girl into that church with that man? He was the librarian of the church. By his own statement he had promised her a book. King in his testimony, when he was on the stand, said he found the library door open when he went in. Who opened it? Theodore Durrant. And he opened it that Wednesday afternoon because his first thought was of the library room; but it would not do. Why? Because when he got in there he realized, as perhaps he had not realized before, that this room was the first room, the first room opening off the vestibule, and that it had a window that opened out into Bartlett Street, and that if there was any resistance to what he wanted to do, and denial of his desires, any scream, any sound, on that quiet afternoon, out on Bartlett Street, something might be heard. He would be liable—nay, more than liable—he was almost sure to be discovered and exposed.

No, on second thought, the belfry was the place! Can you not imagine, can you not see, as I can, that room? When I close my eyes I can see that man and that woman; and I can see him telling her to come up there into the belfry for the view that there is over the city; telling her of the people who had been up there before—how the girls in the neighborhood had been up there, and the young men; telling her there was a beautiful view up there. And I can see the two walk side by side out of the library room, up the broad sweep of the stairs, mounting the southwesterly tower of the church, and passing through the gallery of the church to the belfry door.

And I assert, gentlemen, that as certain and as sure as the stars maintain their course, on the afternoon of Wednesday, the 3rd of April, 1895, between 4:15 and 5 o'clock, in

the belfry of the Emanuel Church, behind that door, between the inside of that door and the upper platform of that belfry, or somewhere in that belfry, was this murder committed. Either upon those stairs or upon that platform, one or the other, this murder was done. The cry, the sobs, the groans, that would have been heard from that library room—out on Bartlett Street, perhaps would have melted into thin air up in the belfry. The wildest shrieks that ever human lips uttered, when the soul was torn from its body and hurled, wailing, before its Maker, would have been lost to human ears, though plain and distinct as the trumpet of St. Michael to God, who, looking down on the profanation of His holy house, veiled His eyes, and murmured, “Vengeance is mine—I will repay.”

Through the church we have brought him and into the belfry. No words of mine can impress upon you that scene any more graphically than it is now probably fixed in your mind, but I have often thought with what kind of feelings must that man have stood in that place, and stood by—passion’s slave—gazing on the wreck his passion had wrought. It is always hard to leave life. All the consolations of religion, all the blessed hope of immortality that hallows the human soul, has only been able to alleviate to some extent but not to destroy the terrors of that plunge from the known and seen to the unknown and unseen.

To what could a girl like Blanche Lamont have looked forward? What could a pure, good and gentle daughter of any of us have seen before her for her future life? Why, she would have seen that which first comes into a woman’s heart and last leaves it. Before her she would have seen the master alchemist of love. She saw in her day-dreams, as in a glass, darkly, him come into her life, whose hands should sweep the sounding octaves of her soul and by its divine harmonies turn all the floating dust of everyday to clouds of summer glory. She could look forward to her wedding; her life; to those later days when the maternal instincts roused and sang their tender and intoxicating songs, and her heart was filled with the chords of their divine har-

monies. Then a little further she could see herself growing old in honor, her work all done, and children's children filling up the house with sounds of baby voices. Then, like one who wraps the draperies of her couch about her and lies down to pleasant dreams, from her hands dropped the treasures once clutched to the heart's core; and attended by the ministering hand of science and the consolation of religion, she closes her eyes on the sunlight of this world, to open them again in that realm where there is no more sunset and no more death.

Alas for her, whose day-dreams are all shattered! Alas for this young girl for whom outrage and bloody murder were to take the place of love! Alas for her whose life was to be throttled from her at its very portals—defiled, debased, dishonored and done to death within the very glimmer of the altar where each seventh day she prayed, "Lead us not into temptation, but deliver us from evil!"

There she lay, and there he stood, his eyes upon that form. What should he do? What should he do?

Gentlemen, the strongest instinct in the world—stronger than love, stronger than honor, stronger than anything else—is that which springs up unbidden in the human breast—self-preservation. What should he do? He must preserve himself. How could it be done? It was Wednesday; it was late in the afternoon. What could be done? Ah! That's it—that door of the belfry! Nobody passes into the belfry, according to the testimony, except the janitor on some occasional errand, or when some person goes there to see the view. The door of the belfry! So he gets the hatchet; according to the testimony of King, he knew about that hatchet. He, according to the testimony of Church, the janitor, had a key that could open the janitor's room. In this janitor's room was kept the hatchet. Up in the belfry was found the hatchet. Who got it? Who brought it there? The man who knocked those knobs off the door. He is the only man who brought it there, because that is what the hatchet was used for. He gets the hatchet. He closes the door. The knobs are broken off and thrown on

the platform. This was done by the defendant on the inside of the door, because that platform is sealed up in the gallery. Those knobs could not have been thrown in from the outside. It was there where that opening was from the inside through which they were thrown and through which the police discovered them later in the month.

We know that these knobs have been broken off the belfry door. The force that was used to break them off was so considerable that the plate upon the door itself was sprung and no key could open it. The officers tried their keys and Sademan tried his key. The terrible necessities of the case in which this murderer found himself when he had to close and bar the door to the belfry by breaking off the handle so that it could not be opened—the necessities of the case compelled him, when he destroyed ingress to the belfry, to destroy egress. If nobody could pass out from the inside, he could not pass in from the outside through that door. That being manifest, in what position does he find himself? He cannot remain in that belfry until the crack of doom. He cannot stay there to die himself of inanition or else, like a ghoul, to feed on the body of his victim. He would have to get away.

Your inspection of that belfry will develop two facts. There are but two modes of egress from that belfry, eliminating the door—one is through or from the second or false platform of the belfry, through the open joists or beams that run up there; thence through the opening broken in the ceiling that runs over what we call the mid-ceiling space. That was the route which this murderer had to take to get away from the scene of the crime. He could not get through the door of the belfry, hence he must pass through one of these other openings. If he passed through either of these—and he must have passed through one—that brought him to the mid-ceiling space, where were located these sun-burners.

It brought him to that space. From that space there were but two modes of descent, one by the ladder, which could run from the gallery into the opening up there and opens into the mid-ceiling space. But he could not get out of

that, and I will tell you why—because when he took that girl up into the belfry, that ladder, as it was customary for it to be, lay in its place. It lay in the gallery; it was not kept standing up there. You do not suppose and I do not suppose for a moment that a man with his breast filled with the emotions like this man's must have been, could stop while he took a 50-pound ladder, opened the floor and fixed it up. I do not suppose he ever thought of that ladder at that time. But the ladder being in the gallery, he could not get out of that front space.

The gallery is twenty or thirty feet, I suppose, below that opening. There the ladder lay, and there was space enough yawning below that cavity that, if he had tried to descend it without a ladder it would have saved the State an expense and us the weariness of this trial. Therefore, there was but one other means of descent—to pass over and through that mid-ceiling space into the attic down to the back stairs to enter the hall that runs behind the pastor's study and the baptistry, down to those back stairs which lead into where the defendant says he and George King carried the organ. That would land him just where he says he saw George King, and saw him in the opening of the glass doors in the Sunday School room. That was the only way he could follow to get out of that mid-ceiling space, and when that man appeared to the eyes of King there in that doorway, he had come down out of that mid-ceiling space, down those stairs, down to where King sat in that Sunday School room. It is just as sure as though we saw him there, because it is the only route he could have followed. There being but one, he was bound to take it.

Gentlemen, my history brings me to George R. King, who impressed me as a man who knew too little for a man who knew so much. He was a reluctant witness, so reluctant that when he was upon the stand in the interests of the State, I had to sit down in my chair in front of this opening in the fence and drag out of him what testimony he did give.

What kind of a witness was this young man? Intimate with the defendant; a visitor at the defendant's home; the

defendant visits at his; a visitor on his parents; his parents visiting at his house; all along through this trial a visitor to the defendant at the jail.

Whatever Mr. King may know that we do not know at this trial I cannot tell; but I believe that in the time to come this young man, who has a long life, I hope, before him, will regret the part that he took in this case, for I do not believe that George King has done his full duty. He is like the man of whom Tennyson spoke when he said:

"His honor rooted in dishonor stood
And faith unfaithful kept him falsely true."

But we must not disregard his testimony. It is very important, considering the source from which it flows. Considering the individual who gives this testimony; considering the relations that he maintained with this defendant, and had maintained for a number of years, the testimony that George King gave, unwilling as it was, reluctant as it is, is very important testimony. King would have you believe that when he came into the vestibule of the church on that day he smelled gas; but the testimony of Sterling, the plumber, is that he was in the church the day before and all the burners except the sun-burner, which he had not completed, were in perfect condition.

But if he did, and if he went, as he says, into the library room to see if that little gas bracket that he put in was out of order, in what condition did he find the library room? He found it, he says, with the door open.

Mind you, this was about ten days or two weeks after he and Durrant had put that lock on the library door for the purpose of keeping the library books safe. To that lock but two persons had access. George King had one key. Durrant had the other. When George King entered the church that afternoon and found the library door open he knew in the first place that he had not opened it, because he had just come into the church. One of two or three things must have happened. Either Durrant had been there and unlocked that door with his key and gone inside for

some occasion of his own, or somebody had opened that door for some improper or illegitimate purpose.

He went in there and tried that gas burner with a match. But he did not see the defendant's hat and coat; he saw them on the second visit when he came there with the defendant to the door. Then he passed out of the library room, locked the door behind him, sat down at the piano and ran his fingers over the keys—sat down at the piano to play in an atmosphere so charged with gas, as he says, that it kind of made him sick. He did not open any window; he did not leave the doors open. He had been playing a few minutes a little light piece of music when suddenly at the door appeared the apparition of the defendant, without his coat, without his hat, pale, with distorted features, congested eyes, disheveled hair, and he stood there at the door and looked at him for a minute.

What was the position of Durrant when George King sat down and began to play the piano? Where was he? He says he was in the mid-space. I say from the facts and the known circumstances, he was in the belfry. At that time and while King was playing the piano, one of two things happened—either he did not hear King playing or he did. If he did not hear it was because the acoustics of the building, the arrangement of the floors, deafened the sound and because the horror of that murder he had committed paralyzed his faculties and he did not hear a thing until he came down those stairs and stood gazing like a ghost on the boy at the piano. If he did hear him, his counsel says he might have gone out the front way, put on his hat and coat, which he claims were in this room of which King unlocked the door, got out of the front door and escaped. They tell you that no man in his senses would come down those stairs, go into the presence of George King and make a witness against himself.

Gentlemen, it is easy enough to see how that was done, if he did not hear George King. If he did hear him, what brought him there? Imagine the sensation that would come

to a man after the perpetration of such a murder as that—in the belfry alone with his dead and hearing the sound of the piano floating up to him! What should he do? Should he remain where he was? Should he remain and listen for his retreating footsteps, and then go down stairs, get his things and go away? It recalled him to himself. It showed him himself as he was, the bloody murderer of a half-grown girl. Every moment that King's fingers idly wandered over that piano evoked from him some cursed promise of delay or detention. It was Wednesday night, the night of the prayer meeting. It was already verging after 5 o'clock and shortly the janitor might be up there to light up the church. He could not afford to be found there. He had to make the best of a bad business. He had to select the only opportunity that was offered him, to go down and face George King if he heard him playing the piano, and frame some specious lie that would catch the ears of this boy and remove suspicion—suspicion that his presence and his tale would excite in a maturer mind and get King out of the church on some pretext and so leave him to rest and repose his carcass, exhausted by lust and murder, and afford an opportunity, however brief, to compose his haggard and disturbed features.

Look at it another way. Take the story that the defendant tells himself of his presence in the church. Believe, if you can, that at the time when he heard the notes of the piano floating up to the ceiling of the church, he was leaning over the gas-burner and fixing the tips that went around the corona.

George King, who is shown to be the close and intimate friend of this defendant, says that he went to the piano and that he played there not more than two or three minutes before Durrant appeared. Durrant says that he heard George King while he was at the sun burner, leaning over in the position indicated on the blackboard. After he heard King's hands strike on the keyboard he arranged the electric spark-transmitter; he cleaned out the burners as far as he

could reach them with the card he held in his hand; he dropped the half-charred card through the opening in the floor of the auditorium; he replaced the reflectors, dusted them off, walked the space over the top of the ceiling to where the ladder comes to the gallery, descended the ladder, lifted down the forty or fifty-pound ladder, laid it on the floor of the gallery, tried the valves, turned on and off the gas to see if it was in working order—did it several times to see if it worked rightly; walked down the stairs from the gallery to the auditorium, crossed the auditorium to the rear of the church, closed the attic door, descended the attic stairs and burst on King's vision two or three minutes after he had sat down at the piano.

Gentlemen, it is physically impossible. I leave it to your judgment, to your discretion, to your knowledge of men and affairs, to prove to you that no man could go through the performance that this defendant says he went through in the time in which his personal, intimate friend, King, says he did.

What was the matter with those burners that required fixing? Nothing so far as we know. The defendant says that one of the trustees, Mr. Code or Mr. Davis, or Mr. Sademan, the janitor, asked him to fix those gas burners. Mr. Sademan says that the gas burners were in perfect order on the last occasion when he used them, and in perfect order when he lit them on the evening of Wednesday, April 3. The trustees say that never during this year did they request him to perform any of that work.

Did this defendant, when he passed out of the church, want to go home with George King to talk about the Easter services? Do you suppose that was the idea he had in his mind? No! Here is another of these irresistible and conclusive inferences: He went out of his way and he walked nearly home with George King to get him out of the church. He did not want to have George King, who was a lithe little fellow and probably climbed like a cat, prowling around the church. He wanted to know that he was away from there and the field was clear, because George, I should imagine,

was an inquisitive kind of a boy that would go climbing at any place. He did not want George there.

Here is another curious fact in connection with this case. From the beginning to the end of criminal jurisprudence, the greatest, the most infamous, the most crafty murderers have done those things they ought not to have done, and have left undone those things they ought to have done. From the very first one of them—from Cain, from the robbers that killed Ibicus, Eugene Aram and Professor Webster, right down to Durrant—they have always done something they ought not to have done. There is no accounting for it. It is simply the irrepressible influence of history on crime. It is the remarkable atavism of great criminals. Professor Webster helped to lose his life through his preservation of the mineral teeth of his victim. Eugene Aram helped to lose his through his discussion of the bones of Davis Clark that were found in the cave. Couvoussier, the infamous English murderer, was brought to justice after a career of crime through preserving and wearing a collar-button that belonged to one of his victims and which was worth at most sixpence; and Theodore Durrant, last but not least of that grisly brotherhood, has helped to convict himself by robbing the dead.

Why should he have taken those rings? God, who alone reads the heart of the guilty and the innocent, can tell. But he did take them; and as he dragged from that girl's stiffening fingers those trifles, damp with her death-sweat, and dropped them into his hungry pocket, he must have felt in his dank and flabby hair the first cold breath of the harvest that was to come to him—the harvest for which he himself had sharpened the sickles that he was to reap with. As he had sown, so should he reap. He had sown misery, blood, sorrow and tears. He should reap exposure, detection, conviction.

He was like the mariner who stands on the deck of his ship that every moment plunges lower toward the airless meadows of the cavern deep. He feels it sinking beneath

his feet, yet he goes into his stateroom and straps about his body the little hoarded gold that shall weight and drag his body down to lay his bones among the timbers of dead ships and coral reefs and all the dead in life that moves within the bowels of the sea. Why is it? How is it done? There is no explanation of it except the curious atavism of crime.

This defendant did not know it. He, I presume, was not a student of criminal jurisprudence. He did not know that in his narrow brain he was working out and illustrating the parallels of history; he did not appreciate his relationship in crime to those who had gone before him; he did not know that he did what almost every great criminal of the world has done before him.

Take a man of these habits; place this man, in your judgment, with his own known habits, with his own known means; pile into the scale with that this same curious atavism of great criminals of which I have talked, and the scale sinks. After this man had taken these rings—and I call it to your attention that he must have taken them at the time of or shortly after the death of the girl, because it would be difficult and almost impossible to drag, after days, the rings from a finger bloated and swollen with decomposition—after he had taken these rings, what should he do with them? Down in the cellar of the Emanuel Church, where you went, is the great furnace of the church. The question arises, why didn't the murderer burn the clothes of his victim? He took them and hid them in inaccessible portions of the church. Why, I do not know; but he hid them there with that same disposition that led him to hide instead of destroy those clothes, and he took and carried away with him the rings, the simple ornaments of this girl. Once in his possession, what should he do with them? Should he throw them down some convenient sewer? No. Having once nerved himself to take the trifling property in the same way in which he tore the clothes from the body, after all he had probably suffered in taking them

himself, was he going to throw them away and destroy them and reap no benefit from them?

So he takes that property, and having it, what is he to do with it? Gentlemen, that diamond ring on exhibition here—it is hardly worthy of the name of diamond—you have seen yourselves and examined. It is a little gold band with a chip in it, I suppose worth \$2.50 or \$3.00. But here was a young man whose life, whose social surroundings, whose labors did not lead him into places where he could form the estimate of the value of jewels. From the time that he was old enough to reason until the 3rd of April, 1895, this man had probably never seen, except in the window of a jewelry shop, a diamond as big or as small as the one set in this ring. At the time when this ring was offered for pawn, there was, I believe, no thought that the girl had been murdered. It was public notoriety that a girl had disappeared. This was before the 12th of April; this was before the time when the first circumstances had occurred that led to a search of the belfry of the Emanuel Church. The police were searching on the street and through the houses for a missing girl—not for a dead girl, but for a missing girl, vanished girl, somebody who had run away or gone away from home—from one end of the city to the other. Therefore, what would a man of this character do, that had these things in his possession that might or might not represent a certain sum of ready money? This was before the 12th of April. On the 12th of April, while waiting at the ferry he might have wanted some small sum of money which he did not possess. With the idea that this ring was of some value, he goes to the pawnbroker, and the pawnbroker says that is the man, and the pawnbroker says that is the ring.

What are you going to do with Phillips? Disinterested as he is in every way, why should Phillips come here as though he had dropped from heaven to testify that on this morning, outside of Oppenheim's pawnshop, he saw Durrant? Has this man from San Rafael joined in the conspiracy with the other witnesses to swear away the life

of an innocent man? Phillips did not know any of these witnesses. Phillips did not know Oppenheim—had merely seen him; and Oppenheim did not know that there was such a man as Phillips in existence.

It could not have been Lenihan that he saw. You have seen the Lenihan ring and the Lamont ring; you have seen the difference between them. You have seen Lenihan; you have seen the difference in appearance between Lenihan and this defendant. You have seen Lenihan with his coat on, the blue coat he speaks about; you have seen him with Durrant's overcoat on. You have seen him with his soft hat on; you have seen him with the other man's soft hat on. Oppenheim saw the man that brought the ring to him; he identified the ring and he says he saw the man. Phillips did not see the ring, but he says he knows the man and he would know him with his head shaved. He tells you how his hair was worn on that occasion, long; he tells you of a movement of visage, a muscular contraction that this defendant has of pursing up his lips.

As I have said before, it is simply and solely another illustration of the curious atavism of crime—that heredity which forces on the criminal to do the wrong thing at the right time, just as hereditary insanity springs up even in the third and fourth generation. It is in the blood; you cannot tell what it is. We cannot explain it, we cannot understand it, but there is the fact. Whatever the case, there is the effect, patent and manifest. We have it; it is like the wind, we do not know from where it comes or whither it goes, but it is there.

Gentlemen, we claim that we have shown you a case of murder in the first degree. There are two sides to every story. This is the proof that has been brought out on behalf of the people. What is the other side of this story? How is this proof opposed? By what phantom broom is this accumulated mass of testimony to be swept out of the court room? By what magic seven-league boots is this defendant going to stride over barrier after barrier—over the testimony of Mrs. Vogel, one stride; over the testimony of Minnie

Edwards, another stride; over the testimony of Mrs. Dorgan, three; over the testimony of Miss Lanigan, four; over the testimony of Mrs. Crossett, five; over the testimony of Mr. Quinlan, six; over the testimony of Mrs. Leak, seven; over the testimony of George King, eight; over the testimony of Mr. Oppenheim, nine; over the testimony of Mr. Phillips, ten. How is he going to stride over this?

Gentlemen, what defense is made to this charge of hideous murder? The defense that was made by the first murdered—an alibi—and, added to that, testimony of good character.

I suppose the most ancient of all cases should be quoted first:

“And Cain talked with Abel, his brother: and it came to pass when they were in the field, that Cain rose up against Abel, his brother, and slew him.

“And the Lord said unto Cain, ‘Where is Abel, thy brother?’ And he said: ‘I know not. Am I my brother’s keeper?’”

The first case of an alibi! Fiction, gentlemen, follows history. Good fiction is sometimes history.

You will recollect that Mr. Pickwick was charged with having broken his promise to marry Mrs. Bardell. Mrs. Bardell thereupon sued him for a number of solid English pounds sterling. Mr. Pickwick had a servant by the name of Sam Weller. Sam went to consult his father, Weller, Sr., about Mr. Pickwick’s trial. This is what Mr. Weller suggested, though he did not know anything about the Durrant case:

“Vell,” said Mr. Weller, “Now I s’pose he’ll want to call some witnesses to speak to his character, or p’raps to prove an alleybi. I’ve been a-turnin’ the bis’ness over my mind, and he may make himself easy, Sammy. I’ve got some friends as’ll do either for him, but my advice ’ud be this here: never mind the character and stick to the alleybi.” Character and alibi. The character is the shorter.

November 1.

Student Ross testified that he did walk with the defendant and that he could not remember the date; that he stated

to Dr. Cheney that he and Durrant had lunched at a restaurant on Fillmore Street on that day. What are you going to do with that? Talk about your alibi! What are you going to do with that? A plain, manifest, bald-faced attempt to seduce the ears and minds and consciences of this jury; to befog and becloud the officers of justice and to escape from the net that has been so carefully and patiently woven around this man, like the fish that lies on the bottom of the sea when he is attacked by an enemy, with his tail he stirs up the mud about him and so escapes and is gone. This walk with Ross took place, according to Ross' statement, upon another day; not upon the day when the defendant did not care to pay for a full meal, and did not feel well, and got all those nuts and ate them, and scattered the shells along from the Medical College, but upon the day when they went to a Fillmore Street restaurant and had lunch. Thus he failed not only to corroborate the defendant, but he absolutely contradicted him as to the time. What becomes of Carter, the other truthful gentleman, who accompanied him and told what occurred? But Carter did not try to fix the date. He met the defendant, Durrant, and Ross upon this walk. Ross having failed, Carter has failed; Ross having taken this walk with the men upon another day, Carter met them on that walk, and therefore Ross and Carter, instead of supporting defendant, contradict him.

And now, gentlemen, we come to the roll call. There is no one student who can remember the presence or the absence of that defendant upon that day. There is no one of them who saw him there. No one of them beside whom he sat. No one of them who conversed with him coming in or going out of the lecture. No one of them who compared notes with him. No one of them who did any single human thing he can state that seventy-two young men gathered together would be likely to do.

Study the record in the light of the testimony given by this defendant and the testimony given by Student Partidge—that upon another occasion the defendant had got

this student to answer for him at the lecture; that he was marked "present" there, and that his absence would never have been discovered unless he had been called upon to be quizzed.

Study the record in another light—that upon its face the record itself is wrong. If it be wrong in one instance, why not in another? It is wrong as regards Garvin. He was marked "absent" with a big "A," while he was present, and he testifies on the stand. I believe Mr. Gray is a truthful and decent gentleman; but if Mr. Gray made that mistake about Mr. Garvin, why could he not have made a mistake about Durrant?

That book will show, upon comparison with Glaser's book, that the only information he had of that lecture was from Mr. Glaser's reading to him; and he knew that four-fifths of his book was composed of the same words as Dr. Glaser's. This at a time, gentlemen, when he sat upon the stand, before this jury, and in answer to my questions, said, "At that time I did not have an idea of an alibi; my only idea was to follow instructions."

What is the motive of this? Why should Dr. Graham come to you and tell you this story if it was not true? What motive can this man have in telling this story, and what motive has this defendant in putting the burden of this story upon the lips of Dr. Graham, saying that Dr. Graham made the proposition to him, in the same way that he swears that Carrie Cunningham told him what she testifies upon the stand he told her. was introduced only and solely for the purpose of showing that, no matter how cribbed and confined by inexorable circumstances of this case, and the inexorable circumstances of the physical facts in this case, that, from one end to the other, this defendant had only one reason and one story to tell this jury—namely, that all the witnesses to the physical facts were mistaken and that all the people who testified to conversations with him had placed the cart before the horse.

Gentlemen, the time, the place and circumstances indicate who is guilty of this murder that has shocked a continent.

This murder that is known wherever the all-speaking voice of the telegraph carries man's thoughts—over the mountains and over plain, over sea and land, wherever men reason and think and read and hear, there has this murder gone! In New York, in Berlin, in Paris, in St. Petersburg, in Constantinople, from one end of this civilized country to the other, men know that the twelve men now before me are making history; that the verdict in this case will be commented upon and spoken of by every man who thinks, and until the end of history: by every student of fact, and every lawyer who deals with criminal jurisprudence.

In conclusion, gentlemen, I can truly say that in opening the case for the people, I endeavored to the best of my ability to state without exaggeration and in their proper chronology the facts upon which the State relied to prove beyond reasonable doubt the guilt of Theodore Durrant. I strove to perform the most responsible task, fully, fairly and without prejudice or passion, official or personal. My obligation as a prosecutor required of me such an effort, and I believe that I have done nothing more or less than my duty as God has given me the power to discern it. I may add that so far as my personal feelings are concerned, I have struggled not without difficulty, all through this investigation, to be more than fair to the defendant; to lay aside for the moment my sentiments of utter horror and detestation of the man whose guilt the proofs absolutely convinced my mind of; sentiments which have daily more and more oppressed and hindered me as in no other criminal case in which I have heretofore participated.

Now, here, you have to combine and place in due order, the testimony in the case intrusted to your keeping. Witnesses have brought to you their facts, their observation, their experience. Separate facts, each of no great significance of itself, are borne to you by many persons. The structure you are building depends upon the truthfulness, the discernment, the motives of no one man or woman. Each part fits with its companion part without doubt, hesitancy or jar. Slowly has this monument of patient

investigation and tireless search been rising, each day stronger, each day more irresistible as it has neared completion.

There is weakness nowhere. There is at every side and at all heights that abiding conviction, that moral certainty which the laws say must bind together and cement the entire frame and substance of the case, and brings the candid and honest mind to the conclusion that this defendant, and none other, was the slayer of Blanche Lamont.

The structure which has thus been builded, cemented with a mass of indisputable facts consistent with his guilt, and absolutely inconsistent with any reasonable hypothesis of his innocence, is now before you. It is for you to finish it. Will you crown it with the sublime form of justice, robed in her garb of law, her forehead bound with the lambent purity of truth's white diadem, and in her hand the flaming sword that punishes the doer of unutterable sin; or will you leave it to the usurpation of an incarnate hell, to a grinning and deriding fiend, mocking at the paralysis of human intelligence, and hugging to his devil's breast the crime of this dreadful monster, perpetrated under the shelter of a church of God, and saturated with unspeakable and measureless depravity?

Gentlemen of the jury, so far as the people of the State of California are concerned in the exposition of this most tragic story, this case is with you.

THE VERDICT AND SENTENCE.

November 1.

JUDGE MURPHY charged the jury at length upon their duty to weigh carefully all the evidence, the burden of proof, the presumption of innocence, the weight to be given to the prisoner's testimony and that of the other witnesses, the questions of alibi, identification, good character, motive and circumstantial evidence, the degrees of murder, etc.

The jury retired at 3:30 p. m. and at 3:50 returned into court with a verdict of guilty of murder in the first degree.

November 8.

Today the prisoner's counsel moved for a new trial which was overruled and the prisoner sentenced to be hanged.

THE SUBSEQUENT PROCEEDINGS.

An appeal was taken to the Supreme Court, which on March 3, 1897, affirmed the judgment. *People v. Durrant*, 116 Cal. 179.

A rehearing was denied and Durrant was for the second time brought before the Court to have the time fixed for the execution. Judge George H. Bahrs²² presided and fixed the time for execution June 11th, 1897. An appeal was taken from this order. The case had in the meantime been taken into the Federal Court on a writ of habeas corpus on the ground that the defendant had not been accorded his constitutional rights. The writ was denied by the United States District Court, then successively by the United States Circuit Court and United States Circuit Court of Appeals and was finally taken to the United States Supreme Court. During this time James H. Budd²³ Governor of California, was appealed to. The matter was elaborately argued before him and he went to San Francisco in person to conduct an investigation of his own at the close of which he refused all executive interference. But he granted a reprieve until the matter could be passed upon by the United States Supreme Court. On November 8, 1897, the United States Supreme Court sustained the lower courts in refusing the prisoner a writ of habeas corpus. On November 10 the prisoner was again taken before Judge Bahrs and the Court after reciting that the judgment of death pronounced on December 6, 1895, still remained in full force and unenforced, and the law requiring the Court to inquire into the facts and see if any reason existed for its non-enforcement, the Court finding that there were no reasons, ordered that the judgment of death be executed at the State Prison on Friday, the 12th November, 1897.

The prisoner's father now applied to the United States Circuit Court for a writ of habeas corpus. Argument was heard on the morning of the 11th November. Judge Morrow²⁴ rendered

²² BAHRS, GEORGE H. (1863-1915). Born and died San Francisco, Cal.

²³ BUDD, JAMES H. Born Janesville, Wis., 1851; went with his parents to California, 1859 (Stockton). Educated Britan Coll. School and graduated Univ. of Cal. 1873. Admitted to bar 1874 and Asst. Dist. Atty. one year. Member of Congress 1883; Brig. Gen. Nat. Guard. Governor of California, 1895-1899.

²⁴ MORROW, WILLIAM W. Born Wayne Co., Ind., 1843. Removed to California 1859. First taught school and then became a minor Clerk in the Treasury Dept. (Washington) and enlisted in army 1862. Returned to Cal., 1865 and admitted to bar, 1869. Asst.

the decision of the Court refusing to issue the writ or to permit an appeal to the United States Supreme Court. Eugene N. Deuprey had gone to Sacramento where the State Supreme Court was in session and there filed an application for a certificate of probable cause to stay the proceedings under the order of Judge Bahrs, fixing the day for the execution of the judgment of death for November 12. This application was made about noon and at two o'clock the Supreme Court granted a certificate of probable cause and staying the execution. (See *People v. Durrant*, 119 Cal. 54.) Mr. Deuprey hurried from Sacramento with a certified copy of this order and hiring a launch proceeded with all haste to San Quentin Prison to there serve the Warden.

The attorneys for the prisoner made a motion before the Superior Court to set for trial the charge, untried but pending against Durrant, for the killing of Minnie Williams. This motion on November 19 was opposed by District Attorney Barnes who stated that the State was satisfied to rely upon the proceedings and judgment on the charge of killing Blanche Lamont. Judge Bahrs denied the motion and refused to set the case for trial. The prisoner's counsel took exception. On November 27 Durrant's counsel filed a petition with the Supreme Court for a writ of mandate to compel the lower court to set the Minnie Williams case for trial. The Supreme Court on November 30, 1897, denied the application.

On December 8 the State Supreme Court disposed of all questions adversely to the prisoner, (*People v. Durrant*, 119 Cal. 201) and the case was remanded to the Superior Court with directions to proceed according to law. On December 15, 1897, Durrant was brought from the State Prison before the Superior Court, Judge Bahrs presiding. The prisoner's counsel now filed a petition, supported by an affidavit, reciting that one Horace Smythe had received and acted upon information furnished to him from sources outside of the testimony whilst a juror in the case, and asking the Court to cite said Smythe for contempt. This matter was assigned to Judge William T. Wallace²⁵ of the Superior Court. It came on for hearing December 28, and the testimony showed that Mr. Smythe had, subsequent to the trial, at a lunch party stated that he had heard during the trial some very uncomplimentary things about Durrant. The Court found that all the occurrences were subsequent to the trial and it was idle gossip at most and discharged the motion.

U. S. Dist. Atty., 1870-1874. Member of Congress, 1885-1891. Judge U. S. Dist. Court, 1891-1897. U. S. Ct. Court, 1897.

²⁵ WALLACE, WILLIAM T. (1826-1909). Born Lexington, Ky. Removed to (San Jose) California, 1850. Dist. Atty., 1852; Atty. Gen. 1856-1858. Judge Supreme Court, 1870-1872. Chief Justice, 1872-1880. Member State Legislature 1883. Judge Superior Court (S. F.) 1886-1898. Member Board of Police Commrs. and Regent State Univ.

The attorneys again applied to the Courts. On January 1, 1898, the State Supreme Court refused to grant a writ of probable cause on the appeal from the last order and at the same time the Federal Courts refused to grant a writ of habeas corpus and refused to allow an appeal. The Governor again refused to interfere. One of the prisoner's counsel started for the United States Supreme Court at Washington as every court in the state had refused aid. The day of execution was fast approaching. On January 5 the Federal Judges again refused the granting of any writ; the Governor again denied his aid. On January 6 the United States Supreme Court again refused to interfere.

THE EXECUTION.

January 7, 1898.

Today Durrant ascended the scaffold; he was attended by Father Lagan and after being placed in position made the following remarks:

"To those who wished me to say something, I will say that I have no animosity toward any except those who have hounded and persecuted me to my death for a crime that never stained my hands and I forgive them as I hope to be forgiven. The crime was fastened on me by the Press of San Francisco, but I forgive all. It is they who have forever blackened the fair name of California by putting to death this innocent boy. Whether the perpetrators of this crime will ever be discovered matters little now to me. All I can say is that I am innocent, and I want those who have circulated the report that I had a sensation to spring to hear it. For the last time on earth I declare my innocence, before God, to whom I now go. He knows the heart and reads the mind, and He will judge me not as I was judged here, but as I should be judged."

Amos Lunt, who conducted the execution, afterwards said: "You can't give that man too much praise. His courage to the last was remarkable. There was something strange about him. I stood close to him, waiting for him to get through his speech, during which there was not the slightest twitch of his face or hands—not once did he falter. While standing upon the gallows he said: 'Don't put the rope on till I am through talking, my boy.' He received no stimulants and would not hear of any suggestions to take any. And when Warden Hale started to read the death warrant he said to him, 'I will waive that right and spare you an unpleasant duty.'"

All the cemeteries of San Francisco refused to accept Durrant's body and the crematories also refused to accept the body for incineration. On January 13 the crematory at Los Angeles in southern California consented, whither the body was conveyed and there reduced and returned, a small box of ashes.

THE MURDER OF MINNIE WILLIAMS.

William Henry Theodore Durrant though executed for the murder of Blanche Lamont had been indicted also for the murder of Minnie Williams. Her body was the first discovered and led to the search of the church and the subsequent discovery of that of Blanche Lamont.

She was short in stature, weighing little over ninety pounds and was twenty-one years of age. Her disposition was most cheerful and her behavior beyond reproach. She was employed for a time as house servant in Alameda, then she worked for Clarke H. Morgan in a factory and afterwards entered Morgan's home in Alameda.

She met Theodore Durrant at the Emmanuel Church where she had also become acquainted with Blanche Lamont. A short time before her death Durrant had called to see her in Alameda and suggested that she meet him in San Francisco as he had something special to say to her and she had replied that he might state what he had to say then and there or might see her at the Christian Endeavor meeting that Friday night.

Miss Williams had made arrangements to leave Morgan's home and go to the home of Mrs. Voy in San Francisco. Her trunk was sent off in the morning. At three o'clock in the afternoon of April 12 she started to San Francisco to attend the meeting of the Christian Endeavor Society that evening. It was at this time that Theodore Durrant was seen hanging around the ferry depot at the foot of Market street, San Francisco (see ante p. 669) by Charles A. Dukes and Clarence Y. Dodge, fellow medical students of Durrant, who saw him there at 3 o'clock. They spoke to him and he told them that he was waiting there for some of the members of the militia signal corps with whom he was going to Mt. Diablo. He asked them to answer the roll call for him at the medical college the next day in order that he might not be marked absent. Henry Partridge had answered for him once before. The question as to whether or not Durrant had attended the lecture given on the day of Blanche Lamont's disappearance was an important factor of that murder trial. Later in the day, about 4 o'clock, Frank Sademan, janitor of Emmanuel Church, saw Durrant still waiting about the ferry. Durrant explained to Sademan that his purpose in being there at that time was to see what truth there was in a clew which he claimed he had obtained in regard to Blanche Lamont. He said he had heard that she was going across the bay that afternoon to visit some friends. After that he scored the conduct of the detective who was at work on the case, accusing him of demanding money for his services and of being wholly incompetent to conduct the search. He told Sademan also that he was there at the ferry for another reason which he did not disclose. The theory of the State was that he was at the ferry not for the purposes he had mentioned to his friends but for the sole purpose of meeting Minnie Williams as she stepped off the Oakland boat pre-

pared for the social function which was to take place that evening.

Durrant was still at the ferry at 5 o'clock where he was seen by Adolph Hobe conversing with a slight young lady who wore a cape (see ante p. 676). This description tallied with the description of Minnie Williams as she appeared on that day.

Minnie Williams arrived at the home of Mrs. Voy before dinner that evening. So far as could be known, Durrant did not accompany her there. After dinner she informed Mrs. Voy that she was going to the Christian Endeavor social at Dr. Vogel's house, but she never arrived there. On the forenoon of the day following her mutilated body was found in the library of the Emmanuel Baptist Church. Nothing definite could be proven, but all the circumstances seem to indicate that Miss Williams and Durrant were the couple seen that evening near the church and the same ones who were later seen to enter it together.

About 8 that evening, Mary Ann McKay, a laundress, was wending her way slowly homeward when she noticed a man and girl on the sidewalk earnestly engaged in conversation. He appeared to be pleading and she was protesting. He wore a long overcoat; she was short of stature. The description of the man tallies with that of Theodore Durrant.

J. P. Hodgkins is a freight claim adjuster. That night after eating his dinner and smoking a cigar, he left his home and started along Bartlett street to the nearest cigar store in quest of another Havana. He came upon a young girl and a man, the latter of whom seemed to be conducting himself in a manner unbecoming a gentleman. Mr. Hodgkins was just about to interfere when he noticed that the man had desisted and that the lady had taken his arm. When Hodgkins passed them they were about 325 feet from the rear door of the Emmanuel Church.

After Durrant's arrest Hodgkins said: "I recognize him this much. Now, I am the claim adjuster of the Southern Pacific Company, and if the paymaster should have told me, 'Durrant has a claim for \$25 and it is subject to payment. I wish you would take the money and give it to him,' I should naturally have said: 'I do not know Durrant. I cannot give him the money because I do not know him.' Then if the paymaster said, 'He knows you and says you were looking at him on the corner of Bartlett and 22nd streets last Friday night. He is coming to your house for the money, and if he is the man you were looking for, you can give it to him.' If he had come there and I had seen him just as I saw Durrant in jail last night, I should have given him the money. That is just as much as I recognize him."

C. T. Hills swore that about 8 that night he saw a man waiting near the church and that presently he was joined by a young lady and that the two proceeded to the church where they entered the side or rear door. About 8 a lad named McElroy happened to be passing the Emmanuel church when he saw a man who looked like Durrant meet a girl on the sidewalk. Later on as he passed through a lot in the rear of the church he noticed a light in the

lower back windows and called the attention of his companion to the same.

Zenger, a Russian upholsterer, whose wife was a member of the Emmanuel Church, had known Durrant almost from his infancy and had known Minnie Williams. On that night of April 12, as he was passing Emmanuel Church, he saw a couple standing near the rear entrance of the church. As he passed they looked up and the lamp overhead revealed their features and he immediately recognized Minnie Williams and Theodore Durrant. They apparently did not notice him, being engaged in earnest conversation. After he had passed by he turned around just in time to see them enter the church by the rear door.

Zenger had heard stories which told of strange actions on the part of some of the young people of the church and so he determined to stop and see if there should develop anything which might confirm these rumors. He wanted to see just how long the couple would remain in the church. According to his story he heard no sounds but after a time the rear door opened and Theodore Durrant emerged—alone.

Although Durrant was not present at the business meeting at the house of Dr. Vogel, he arrived there about 9:30 o'clock in time for the social. His hair was somewhat dishevelled, perspiration stood out on his forehead and his hands were slightly dirty, enough so that he asked permission of Dr. Vogel to wash them. After washing his hands and combing his hair he went down and joined the conversation and took part in the games that were being played and afterwards went home in company with a number of young people without doing a thing which would tend to arouse suspicion. He left Dr. Vogel's house in company with the doctor and some young people from whom he parted and when Wolfe was returning after seeing the young ladies home, he noticed some person standing in a dark spot near the Emmanuel Church who looked like Durrant, although Durrant had said that he must rise early the following morning in order to accompany the Signal Corps to Mt. Diablo.

On Saturday morning some ladies came to the church to decorate for the Easter services. They went into the library. There appeared to be a scarcity of books and someone suggested that they might be packed away in the closet. The closet door was opened and there lying on the floor they discovered the mutilated body of Minnie Williams.

The autopsy showed that the girl died from asphyxiation and hemorrhage caused by the insertion of rags in the larynx and trachea. The rags were pieces torn from the girl's underclothing. The wounds were a lacerated transverse cut on each wrist. In the forehead there were two vertical cuts just above the roots of the nose and three other wounds. Some of the wounds were ante-mortem and some were post-mortem. The girl had been outraged probably before and after death.

The cutting had been done with an ordinary table knife; one

similar to the handle of the one found near the body was kept about the church. The knife was broken off nearly to the handle and several pieces of the knife were found imbedded in the various wounds, so that when the pieces were removed it made the knife complete.

On the day after the autopsy Sergeant Burke went to Durrant's home and found a girl's purse in the long overcoat that had been testified Durrant wore on the night he was seen with Minnie Williams. The girl's purse was found in the pocket of the overcoat and it was absolutely identified, together with its contents, as one that belonged to and was always carried by Minnie Williams. Durrant explained the possession of the purse by saying that he found it while walking on the street.

There were some spots of blood found on a washstand at the church but no blood stains were ever found on Durrant's clothing.

Durrant was not tried for the killing of Minnie Williams, but the coroner's jury promptly charged him with the crime of her murder. It was thought by the prosecuting officers that the chain of evidence was most complete in the Lamont case and for that reason the Lamont charge was first tried, although on developing the testimony in the Lamont case the witness Zenger was discovered which made the Williams case stronger than the Lamont case.

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